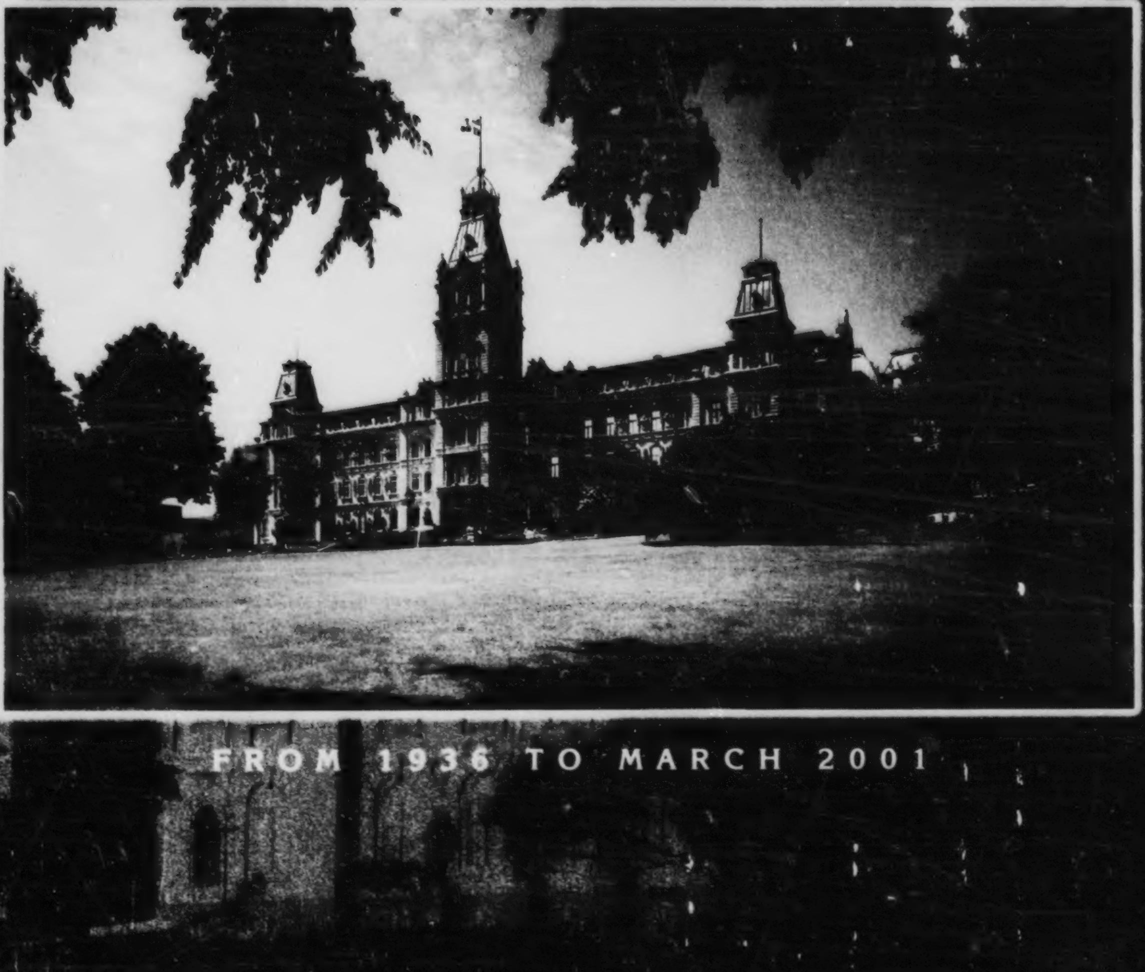
QUÉBEC'S POSITIONS ON CONSTITUTIONAL AND INTERGOVERNMENTAL ISSUES



FROM 1936 TO MARCH 2001

Québec

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QUÉBEC'S POSITIONS ON CONSTITUTIONAL AND INTERGOVERNMENTAL ISSUES

FROM 1936 TO MARCH 2001

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DESCRIPTION OF THE METHOD USED IN THIS DOCUMENT

This document describes and lists the positions and recommendations adopted or formulated by successive Québec governments concerning Québec's status and constitutional powers. It updates the study entitled *Québec's Traditional Constitutional Positions* (1936-1990) that was published by the Secrétariat aux affaires intergouvernementales canadiennes, which then expanded the scope of a study made in 1978 by the ministère des Affaires intergouvernementales du Québec on Québec's positions regarding the distribution of powers. In addition to document updating, the recent version offers three new parts made up respectively of speeches, documents and a timetable of events.

The study now covers a period of 64 years, i.e. from August 26, 1936 when the first government of Maurice Duplessis was sworn in, until March 8, 2001, the date when Lucien Bouchard's government ended. It makes no claim to be exhaustive. Furthermore, since the source of each government position has been indexed, the reader can procure an overview not only regarding the nature of these positions, but also their scope, consistency and the issues at stake.

Entitled "Positions of Québec," the first part of the document presents the positions and claims of successive Québec governments in chronological order. The drafting of this part required research into various government sources such as supporting documents, accounts of intergovernmental meetings, communiqués, white papers and legislative discourses.

The classification adopted in the 1991 document was kept intact yet subject to some changes involving a new heading added to the six preceding ones, among other changes.

Bearing the title "Status of Québec," the first heading under part 1 of the document reviews government statements regarding the place that Québec should occupy within the federalist context of Canada, as well as statements dealing with Québec's accession to sovereignty. This heading especially delves into the fundamental interpretations that Québec governments have given to the Constitution Act, 1867, and to issues relevant to the process by which Québec's political status is determined.

The second heading addresses the constitutional reform process. It includes statements pertaining to constitutional policies of various governments, as well as their positions as regards major milestones in the evolution of constitutional affairs as seen from a Québec perspective.

The third heading looks into positions relating to the constitutional amending procedure.

The fourth heading presents positions taken by Québec regarding the distribution of powers. It is divided into three sections: general principles, sectorial jurisdictions, and unilateral powers. The first section covers the principles, criteria and objectives that governments have invoked with regard to the general issue of how powers are distributed. It also includes statements describing the manner in which governments have viewed the interplay of powers. The second section inventories the positions that governments have taken either to affirm and define their jurisdiction over a particular sector of activities, or to claim new ones. Unilateral powers encompass spending, reserve, disallowance, declaratory, residuary and exceptional provisional powers.

The fifth heading, "Individual and language rights," raises the positions taken with regard to such rights within the context of Canadian constitutional reform and within various institutional contexts characteristic of Québec.

The sixth heading reviews Canadian federal institutions, such as the Supreme Court of Canada, the Senate, Federal-Provincial Conferences and the office of the Lieutenant Governor.

The seventh and last heading "Intergovernmental policy," is broader and subdivides into several sections to facilitate consultation. The section on "Conducting intergovernmental relations" includes statements on intergovernmental relation policies set forth by various governments. The section on "Financial aspects of federalism" is a look at various items such as financial autonomy, shared-cost agreements, intergovernmental financial transfers and equity in federal spending. Finally, the remaining sections integrate the positions of principle on certain major intergovernmental issues, especially relations with Aboriginal Nations, the French-Speaking and Acadian Communities of Canada, internal and international trade.

Some government positions belonging to one and the same period could have been reported under several headings used in part 1. To avoid multiple repetitions, references were inserted into the text to indicate positions or declarations that, despite their integration under one heading, are also relevant to other headings. As such, for each chronological subdivision, the reader may procure a broad vision of the field covered by each of the headings. Moreover, the index makes it possible to find positions for the entire period covered by the document based upon specific themes.

In part 1, the chronological subdivisions generally correspond to the succession of governments. Nonetheless, the period covering the Lévesque government (including that of Pierre Marc Johnson) and Robert Bourassa's second government was divided on the basis of major events related to the question of Québec's political status, which wielded influence over the constitutional and intergovernmental policies of those governments.

The second part of the document offers a selection of speeches delivered by the prime ministers and ministers of the Québec government. These speeches are reproduced either integrally or from extensive extracts. They are associated with historic circumstances or they rest upon fundamental issues in the constitutional and intergovernmental domain.

The third part provides a selection of documents linked to Québec's evolution and its positions in constitutional matters, as well as more generally in intergovernmental relations. It also includes Canadian framework texts that Québec did not sign (The Constitutional Agreement, November 5, 1981, which in turn led to the adopting of the Constitutional Act, 1982, without Québec's consent; the Calgary Declaration; and the Social Union Framework Agreement, February 4, 1999, that Québec did not sign).

Finally, the last part of the document includes a short timetable. This is a reference tool intended to facilitate the forming of an historical perspective based on positions, speeches and documents incorporated in this study.

POSITIONS OF QUÉBEC

FIRST GOVERNMENT OF MAURICE DUPLESSIS

(AUGUST 26, 1936 TO OCTOBER 25, 1939)

Roger Bédard

Source: Archives nationales du Québec

••• Constitutional amending procedure

1. The federal pact, by participating in the nature of conventions, can neither be amended nor modified without the agreement of all the parties, i.e. of all the provinces.[1]

••• Distribution of powers

General principles

2. The provinces, to give birth to the federation, agreed to transfer to the federal entity a portion of their powers, but retained, apart from the legislative powers not ceded, their political entity and special constitution. They therefore remained, in their own sphere, sovereign states. The powers and attributes of the provinces do not flow from the central government; on the contrary, the central government was born of the common will of the provinces.[2]

3. The centralization that some circles averse to provincial rights seem to want is a national and social evil [...]. The country's prosperity does not depend on greater centralization of legislative powers. On the contrary, the closer the legislature's contact with the communities for which it legislates, the greater the likelihood that the legislation will be truly productive.[3]

•••Intergovernmental policy

Conducting intergovernmental relations

4. The province of Québec is ready to cooperate closely in establishing an equitable and effective unemployment insurance system that is national in scope, but does not encroach on provincial rights and autonomy.[4]

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1. Brief submitted by the Québec government, public hearings of the *Royal Commission on Dominion-Provincial Relations*, May 12, 1938, p. 4 (quotation). When a paragraph reproduces a statement in full, it is indicated by the expression "quotation". Otherwise, the position expressed by the government is paraphrased as faithfully as possible. Translator's note: in some cases, the quotations originate from existing texts in English or were translated previously for use in the volume: *Québec's Traditional Constitutional Positions 1936-1990*; all other quotations have been translated to update the current publication. Only the latter bear the usual indication: [Translation].

2. *Ibid.*, p. 4 (quotation).

3. *Ibid.*, p. 5 (quotation).

4. Letter from Maurice Duplessis to W. L. Mackenzie King, Prime Minister of Canada, December 30, 1937 (quotation).

GOVERNMENT OF ADÉLARD GODBOUT

(NOVEMBER 8, 1939 TO AUGUST 8, 1944)

Source: Archives nationales du Québec

••• Distribution of powers

a) General principles

5. It is essential to Canadian unity and to Canada's progress that provincial rights be rigorously respected. Any encroachment on these rights would necessarily weaken Confederation.[5]

6. If Canada is to become a powerful nation, it will be because of the strength and well being of each province of the Dominion. We will never succeed in building a great nation if our provinces do not have sufficient freedom of action and responsibilities, elements of progress that are so necessary in public affairs.[6]

7. Québec considers that after the war, it will be necessary and even imperative not only to deprive the federal government of the exceptional powers it has held since 1939, to restore to the provinces the prerogatives many of them have yielded, but also to revise the text and spirit of the British North America Act, to specify the powers of the provincial governments in certain matters and increase their powers in certain others.[7]

b) Unilateral powers

8. If there exists in any part of the country a situation that could compromise the effectiveness of Canada's war effort, no province of the Dominion nor any group of its population would deny the federal government the right and duty to take the measures necessary to remedy it. But exceptional measures should be used to deal with an exceptional situation.[8]

••• Intergovernmental policy

Financial aspects of federalism

9. Under the Tax Rental Agreement 1942, the government of Québec does not cede the right to tax, but only temporarily suspends the levying of two taxes. Ottawa will collect these taxes in return for a compensation favourable to Québec. The government of Québec can put an end to this agreement with one month's notice whereas the federal government can put an end to it only one year after the end of the war.[9] The preamble of the Agreement has the following recital: "Whereas the Province shall not, by agreeing, as hereinafter

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[5] Declaration by Adélard Godbout, Dominion-Provincial Conference, January 15, 1941, p. 85 (quotation), King's Printer, 1941.

[6] Declaration by Adélard Godbout, Dominion-Provincial Conference, January 14, 1941, p. 18 (quotation), King's Printer, 1941.

[7] Declaration by Adélard Godbout in 1944, taken from Claude Morin, *Le combat québécois*, Les Éditions du Boréal express, 1973, p. 68 (quotation).

[8] Opening statement by Adélard Godbout, Dominion-Provincial Conference, January 14, 1941, p. 18 (quotation), King's Printer, 1941.

[9] Declaration by Adélard Godbout before the Québec Legislative Assembly, April 1942, reproduced in Réal Bélanger et al., *Les grands débats parlementaires*, Sainte-Foy, Les Presses de l'Université Laval, 1994, p. 167 (See part 2 of this document). The temporary nature of the suspension of the provincial tax was also reasserted by Alélard Godbout in a letter dated June 9, 1942 addressed to the Prime Minister of Canada, W. L. MacKenzie King.

provided, to desist from imposing certain taxes during the terms of this agreement, be deemed to have surrendered, abandoned or given over to the Dominion any of the powers, rights, privileges or authority vested in the Province under the provisions of The British North America Act, 1867, or any subsequent Act of the Parliament of the United Kingdom, or to have otherwise impaired any of such powers, rights, privileges or authority."[10]

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[10] *Agreement between the Governments of the Dominion and of the Province of Quebec*, May 27, 1942 (Part 3: document no. 2).

SECOND GOVERNMENT OF MAURICE DUPLESSIS

(AUGUST 30, 1944 TO SEPTEMBER 7, 1959)

Roger Bédard

Source: Archives nationales du Québec

••• Status of Québec

10. In 1867, four pioneer provinces decided to form a confederation. It is important to remember this, because it proves conclusively that Confederation was born of the free consent of the four founding provinces. Confederation, let us never forget, is the child of the provinces.[11]

11. Canadian Confederation is a pact of union between two great races.[12]

12. The province of Québec is firmly convinced that the federal system is the only system that can maintain the unity of the country. This system both protects minorities and guarantees the economic interests of each region of the country.[13]

••• Constitutional reform process

13. It seems to us at this time, various amendments to the Canadian Constitution are welcome, but it is our staunch conviction that the spirit of the Canadian Constitution must be integrally respected. From our standpoint, all constitutional issues should be analyzed at this conference, and not just the part of the Constitution that federal authorities have initially submitted to the delegates' consideration.[14]

14. The Province of Québec is heartily in favour of a Canadian constitution decided upon in Canada by Canadians and for Canadians, and amendable through appropriate constitutional and fair methods.[15]

••• Constitutional amending procedure

15. While the Constitution gives the provinces, to a limited degree, the right to amend the Constitution as far as provincial jurisdiction is concerned, it denies the federal government that right.[16]

16. Confederation is essentially a pact. And since the nature of the Constitution is that of a pact, it cannot nor should it be amended without the consent of all the contracting parties, or at least without the consent of the four pioneer provinces.[17]

Constitutional amending procedure:
See also paragraph 14.

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[11] Statement by Maurice Duplessis, Federal-Provincial Conference, April 29, 1946, p. 455 (quotation), King's Printer, 1946.

[12] Opening statement by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 17-18, King's Printer, 1950 (See part 2 of this document). Maurice Duplessis reiterated this statement at the Federal-Provincial Conference of September and December 1950 and the Federal-Provincial Conference of November 1957.

[13] Statement by Maurice Duplessis, Federal-Provincial Conference, April 29, 1946, p. 399 (quotation), King's Printer, 1946.

[14] Opening statement by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 16 (quotation) [Translation], King's Printer, 1950 (See part 2 of this document).

[15] *Ibid.*, p. 17 (quotation).

[16] Intervention by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 83, King's Printer, 1950. See also *Report of the Royal Commission of Inquiry on Constitutional Problems*, Province of Québec, Volume 1, 1956, p. 164.

[17] Brief by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 396, King's Printer, 1946.

••• Distribution of powers

a) General principles

17. The very essence of Confederation is made of sovereign provincial authorities, within the scope of their jurisdiction, and of a sovereign central authority, within the scope of its jurisdiction. When Confederation was discussed and decided upon, it was based on the principle of complete provincial autonomy.[18]

18. Provincial autonomy cannot be safeguarded by substituting federal grants for provincial financial independence.[19]

19. In the social legislation field, the federal system probably offers advantages not found in countries with a single government. Indeed, the coexistence of several governments all autonomous in their respective spheres, because they provide points of comparison, creates by its very nature a healthy rivalry for the greater good of those governed.[20]

20. Canada is a confederation of autonomous provinces. A genuine federal system is based on a federal authority and provincial authorities that enjoy not only the power to legislate and administer, but also the financial powers that enable them to govern.[21]

21. One of the essential prerogatives of autonomous provinces is the ability to collect, by direct taxation and as they consider appropriate, the funds needed for the efficient operation of public services and the implementation of laws passed by their Parliament [...]. Fundamentally, the federal system that allocates public tasks, must also include a correlative distribution of public revenues [...]. A central government that appropriated the sources of taxation for itself would, in fact, reduce the provinces to legislative impotence. A province with no other sources of revenue than federal subsidies would become a kind of lesser body, under the tutelage of the authority that could dole out its means of subsistence.[22]

22. The provinces' exclusive rights in terms of social legislation, education, civil law, etc., must be preserved and protected in their entirety if Confederation is to survive.[23]

23. Social legislation will be more beneficial if it is better adapted to the needs and cultural aspirations of the population to which it applies. Local interest is then the basis of the general interest and provincial legislatures, because of their closer contact with citizens, are in a better position than the federal government to determine the kinds of legislation that should be passed.[24]

24. The province of Québec is not for sale; it will not be sold and it does not ask for any favours. We demand respect

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[18] Opening statement by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 17 (quotation), King's Printer, 1950 (See part 2 of this document).

[19] Brief by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 407 (quotation), King's Printer, 1946.

[20] *Ibid.*, p. 406 (quotation).

[21] Opening statement by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 17-18, King's Printer, 1950 (See part 2 of this document).

[22] Brief presented by Maurice Duplessis, Canadian Intergovernmental Conference, Ottawa, October 1955, p. 10 (quotation), Queen's Printer, 1955. See also statement by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 25, Queen's Printer, 1957.

[23] Brief by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 407 (quotation), King's Printer, 1946.

[24] *Ibid.*, p. 405 (quotation).

for our rights, we want the educational system to be respected, that our exclusive rights be preserved, and regardless of the government in power, we will continue our struggle, with the conviction that we are on the right path and at the same time requesting the cooperation of all those who love this province, who seek the vitality and survival of a great people and at the same time with respect for our sound religious and national traditions. This is not a question of partisanship, this is not a political issue, in the ordinary sense of the word, it is a question of life and survival. Signs of dangers are many; encroachments are repeated; the wounds that have been made are deep and serious, but this is not a lost cause, far from it, if everyone agrees to recognize this situation.[25]

b) Sectorial jurisdictions

25. Québec considers the following areas to be under the exclusive jurisdiction of the provinces: natural resources, the establishment, funding and management of hospitals, asylums and charitable institutions, education at every level, including universities, regulation of the liberal professions, including admission criteria for the practice of medicine and relations between physicians and clients,[26] social security, health, public health, bridge and road construction.[27]

26. Provinces should have exclusive jurisdiction over the following areas: education, property rights and civil law, hospitals, trades and professions, fisheries, marriage, agriculture, municipal and educational institutions, insurance, establishment of an Appeal Court for civil, municipal and educational issues and the appointment of its members, settlement, natural resources, the provincial civil service, administration of criminal and civil justice, the organization and maintenance of courts of civil and criminal justice in each province, civil procedure and appointment of judges to such courts, clearly defined taxation and borrowing powers over provincial matters.[28]

27. Québec protests against certain federal intrusions into provincial spheres of activity, including the following:
    i) Québec protests against the federal initiative of passing family allowance legislation—which it views as a dangerous encroachment on its rights—and, in 1955, passed a provincial family allowance act which, however, it did not implement.[29]
    ii) In 1950, Québec refused to sign a federal-provincial agreement on funding the construction of the TransCanada Highway because, in Québec's view, the agreement did not provide sufficient guarantees concerning protection of the province's rights.[30]

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[25] Declaration by Maurice Duplessis, Hauterive, May 31, 1959, extracted from Claude Morin, *Le combat québécois*, Les Éditions du Boréal express, 1973, p. 68 (quotation).

[26] Brief by Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 397.

[27] Onésime Gagnon, Budget Speech, March 25, 1947, p. 27.

[28] Preliminary brief by the Québec government. Canadian Intergovernmental Conference begun in Ottawa on January 10, 1950, tabled at the Federal-Provincial Conference on the Constitution, Québec, September 25-28, 1950, p. 100, King's Printer, 1950 (Part 3: document no. 3).

[29] *Report tabled by the Royal Commission of Inquiry on Constitutional Problems*, Province of Québec, Volume 1, 1956, p. 175.

[30] *Ibid.*, p. 179.

iii) In 1953, Québec blocked a federal proposal to directly fund Canadian universities through the National Conference of Canadian Universities. Québec objected to the federal intervention to replace essential provincial financial powers with federal grants and to encroach on the field of education, which is within exclusive provincial jurisdiction.[31]

28. The fact that the Constitution of 1867 specifically grants to the provinces the right to levy direct taxes conclusively means that the provinces take precedence in matters of direct taxation.[32]

29. The areas of personal income tax, succession duties and corporate income and capital tax are within the jurisdiction of the provinces which need them and have constitutional priority over them.[33] Estate duties belong to the provinces; they stem from the Civil Code and the Canadian Constitution, which reserves matters relating to the Civil Code and property rights exclusively to the provinces [...]. As to personal income tax and corporate taxes, each province holds exclusive rights in terms of direct taxation for provincial purposes.[34]

c) Unilateral powers

30. Parliament's powers of reservation and disallowance should disappear.[35]

••• Institutions

31. The members of the Canadian court that would be created to replace the Privy Council should be appointed by the federal and provincial governments.[36] It is not reasonable and in conformity with a true comprehension of national unity that the federal authority appropriate for itself the right to unilaterally choose the arbitrators called upon to decide on the respective rights of each party.[37] Québec considers that the Supreme Court of Canada should meet all the conditions required of a third arbitrator for constitutional matters and Canadian intergovernmental relations.[38]

32. Matters of civil law, of municipal law and of school law should be adjudicated upon, in the last resort, by a Court of Appeal set up by each Province, the Judges of which should be appointed by each Province.[39]

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[31] Letter from Maurice Duplessis to Stuart Garson, federal Justice Minister, September 15, 1954.

[32] Statement made by Maurice Duplessis, Federal-Provincial Conference, preliminary meeting, Ottawa, April 26, 1955, p. 36, Queen's Printer, 1955.

[33] Brief by the Québec government, Federal-Provincial Conference on Reconstruction, Ottawa, April 25, 1946, p. 400, King's Printer, 1946. Statement delivered by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 22, Queen's Printer, 1957.

[34] Opening statement by Maurice Duplessis, Federal-Provincial Conference, Ottawa, November 25 and 26, 1957, p. 22 (quotation), Queen's Printer, 1957.

[35] Preliminary brief by the Québec government. Canadian Intergovernmental Conference begun in Ottawa on January 10, 1950, tabled at the Federal-Provincial Conference on the Constitution, Québec, September 25-28, 1950, p. 101, King's Printer, 1950 (Part 3: document no. 3).

[36] Letter from Maurice Duplessis to George Drew, Head of the federal Conservative Party, April 8, 1947.

[37] Opening statement by Maurice Duplessis, Federal-Provincial Conference on the Constitution, Ottawa, January 10-12, 1950, p. 16 (quotation) [Translation], King's Printer, 1950 (See part 2 of this document).

[38] Preliminary brief by the Québec government. Canadian Intergovernmental Conference begun in Ottawa on January 10, 1950, tabled at the Federal-Provincial Conference on the Constitutional, Québec, September 25-28, 1950, p. 101, King's Printer, 1950 (quotation; see part 3: document no. 3).

[39] *Ibid.*, p. 100.

••• Intergovernmental policy

Financial aspects of federalism

33. Provincial legislative assemblies are essential. Obviously they cannot exercise the legislative powers that have been entrusted to them if they do not have requisite authority in financial matters. The provinces need financial authority to resolve not only current problems, but also those of tomorrow.[40]

34. In these difficult times, there are three things that we need. The first one is a precise definition, a clear distribution of the respective fiscal powers of the provinces and the Dominion. This is the very basis, the keystone of national freedom and security. We need greater simplification in the means for collecting taxes and a lightening of the taxpayer's burden.[41]

35. Québec opposed the federal post-war program because it would tend to replace the system of provincial fiscal autonomy with a system of grants that would enable the federal government to exercise financial control over the provinces. Furthermore, the program would deny the provinces access to the most important sources of direct taxation and, to that extent, paralyze their ability to exercise the powers attributed to them by the Constitution.[42] In theory, the substitution of federal subsidies for the essential financial powers of the democratic government is not recommendable, at least generally speaking. On more than one occasion, Sir Wilfrid Laurier stated that it is unhealthy for a government to collect taxes that are spent by another government.[43]

36. Temporary payments, or what is commonly called generous subsidies, may never compensate the loss of permanent rights whose transfer or abrogation may open the door to consequences that are perhaps disastrous.[44]

37. In 1954, Québec passed a provincial income tax equivalent to approximately 15 % of the federal tax. Québec demanded full deduction of provincial income tax from tax paid to the federal government.[45] With the implementation of this income tax, Québec took another positive step in exercising its rights and fulfilling its duties.[46] Following negotiations with the federal government, Québec obtained an abatement equivalent to 10 % of the federal tax.[47]

Financial autonomy of the provinces:
See also paragraphs 18, 20, 21 and 27.

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[40] Opening statement by Maurice Duplessis, Federal-Provincial Conference, August 6, 1945, p. 22, King's Printer, 1946.

[41] Statement by Maurice Duplessis, Federal-Provincial Conference, April 29, 1946, p. 461 (quotation), King's Printer, 1946.

[42] Brief by the Québec government, Federal-Provincial Conference, April 25, 1946, p. 404, King's Printer, 1946.

[43] Statement by Maurice Duplessis, Federal-Provincial Conference, December 4, 1950, p. 30, King's Printer, 1951.

[44] Statement by Maurice Duplessis, Federal-Provincial Conference, May 1, 1946, p. 582 (quotation), King's Printer, 1946.

[45] *Report tabled by the Royal Commission of Inquiry on Constitutional Problems*, Province of Québec, Volume 1, 1956, p. 153.

[46] Onésime Gagnon, Budget Speech, February 12, 1954, p. 16.

[47] *Report tabled by the Royal Commission of Inquiry on Constitutional Problems*, Province of Québec, Volume 1, 1956, p. 154-155. See also the declaration by Maurice Duplessis at the first reading of Bill 43 on the implementation of a provincial income tax before the Québec Legislative Assembly, January 14, 1954 (See part 2 of this document).

GOVERNMENT OF PAUL SAUVÉ

(SEPTEMBER 11, 1959 TO JANUARY 2, 1960)

Laval Bouchard

Source: Archives nationales du Québec

••• Distribution of powers

Sectorial jurisdictions

38. Québec considers that federal grants to universities encroach on an area reserved exclusively for the provinces.[48]

39. The Québec government has no constitutional objection to the federal hospital insurance system. Nonetheless, considering the complexity of the Québec hospital system, plus the objections that provinces participating in the program are beginning to formulate, the government wants to undertake an in-depth study of the federal legislation and the means for adapting it to Québec's specific situation before making a decision regarding this program.[49]

••• Intergovernmental policy

Financial aspects of federalism

40. Québec demands that the provincial university education tax be tax deductible. Under this plan, commercial companies in Québec would be entitled to a deduction of 10% rather than 9% of the annual tax they pay on their profits. This increase would generate approximately the same amount for Québec's treasury as the federal government makes available to universities in Québec.[50]

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[48] Statement by Paul Sauvé, *La Presse*, September 18, 1959.

[49] Statement by Paul Sauvé during a press conference, taken from the article "Québec hésite à cause de son propre système," *Le Devoir*, October 16, 1959, p. 1-2.

[50] Fiscal Conference, October 1959. Antonio Barrette, who was named Prime Minister January 8, 1960, signed a final agreement with the federal government implementing Québec's proposal.

GOVERNMENT OF JEAN LESAGE

(JULY 5, 1960 TO JUNE 5, 1966)

Laval Bouchard

Source: Archives nationales du Québec

••• Status of Québec

41. Québec, as the cornerstone of French Canada, is asking for the equality of Canada's two founding ethnic groups. It is seeking a status that respects its special characteristics.[51]

42. Québec, because of its language, its culture, its links with the international French language community, its economic, social and political institutions, its vitality, its desire to survive and especially to flourish, has all the characteristics of a true society.[52]

Québec's assertion as a people: See paragraph 48.

Special status: See paragraphs 49-50.

••• Constitutional reform process

43. Québec fears that the Fulton-Favreau formula would authorize any province to prevent the extension of the powers of another province. Needless to say, if that interpretation were to prevail, the evolution of our constitutional system in the direction desired by Québec might become very difficult.[53]

••• Constitutional amending procedure

44. To defend its particular status, Québec must have a *veto* over any important constitutional change that could threaten its powers.[54]

45. Among other things, Québec wants a *veto* on any change in the distribution of powers.[55]

46. The central government cannot unilaterally amend its constitution. It is essential that the provinces participate in the formation and operation of central bodies.[56]

••• Distribution of powers

a) General principles

47. Provincial sovereignty must not be a negative concept incompatible with progress; it must be a living reality that is made tangible in institutions and legislation designed to promote the well-being and spiritual growth of the population.[57]

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[51] Speech by Jean Lesage, Canadian Club, Calgary, September 22, 1965, p. 1.

[52] Speech by Jean Lesage, Canadian Club, Winnipeg, October 1, 1965, p. 2-3.

[53] Letter from Jean Lesage to Lester B. Pearson, January 20, 1966 (quotation; see part 3: document no. 8). Jean Lesage had been willing earlier to allow a *veto* for all provinces. See the speech by Jean Lesage to the Reform Club of Montréal, March 1, 1965, p. 3 and the speech given by Jean Lesage before the Québec Chamber of Commerce and Industry, Lac-Beauport, March 10, 1965, p. 4.

[54] Speech by Jean Lesage, Québec Chamber of Commerce and Industry, Lac-Beauport, March 10, 1965, p. 7.

[55] Speech by Jean Lesage to the Reform Club of Montréal, March 1, 1965, p. 3.

[56] Speech by Jean Lesage, Québec Chamber of Commerce and Industry, Lac-Beauport, March 10, 1965, p. 4-5.

[57] Government of Québec, opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 26 (quotation).

48. Québec defends the principle of provincial autonomy not just because of the principle, but much more because for Québec, autonomy is the vital condition of its affirmation as a people rather than of its survival, which is now secure.[58]

49. Québec is working to obtain the powers necessary for its economic, social and political affirmation. To the extent that the other provinces are not working toward the same objectives, Québec will move toward a particular status that will reflect both the specific characteristics of its population and the more extensive role it wishes to assign to its government.[59]

50. Québec wishes to point out that particular status is not necessarily an objective in itself. Initially, it may very well be the result of an administrative development and, subsequently, a constitutional one that, while applicable in principle to the other provinces, in practice would be of interest only to Québec for reasons of its own.[60]

51. The provinces have a clear responsibility for the economic development of their territory. They are better placed than the federal government to produce an economic development policy because they are closer to the specific problems of their people and regions. In addition, they are responsible for the development of human capital through appropriate educational, welfare and health measures, which lie within their jurisdiction.[61]

52. While provincial and interprovincial [economic] policies can be implemented, as circumstances require, with or without the federal government's participation, federal policies must never be decided without consulting the provinces. The only way to avoid duplication and inefficiency is through on-going consultation by both levels of government.[62]

53. If regional development policies are to be effective, they must satisfy three conditions: they must be adapted to the specific needs of the regions; they must be applied by the government in the best position to respond; they must take into account the whole social and economic policy of the government of the province where the regions are located. The federal government seems to have difficulty adapting its instruments to the needs of Québec's regions. The Québec government is in the best position to implement a truly effective regional policy.[63]

54. The federal government should cease its intrusion into areas of provincial jurisdiction through excessive use of its ancillary power, which leads to the artificial creation of zones of ambiguity and duplication of administrative controls and standards.[64]

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[58] Opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p.42 (quotation), Queen's Printer, 1964.

[59] Speech by Jean Lesage to the Empire & Canadian Club, Toronto, November 16, 1964, p.3-4 and to the Sainte-Foy Chamber of Commerce, December 14, 1965, p.5.

[60] Speech by Jean Lesage, Canadian Club, Vancouver, September 24, 1965, p.4.

[61] Jean Lesage, Budget Speeches, April 12, 1962, p.48 and April 5, 1963, p.59. See also the opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p.40, Queen's Printer, 1964.

[62] Opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p.48 (quotation), Queen's Printer, 1964.

[63] Government of Québec, statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p.5.

[64] *Ibid.*, p.26.

b) Sectorial jurisdictions

55. Québec claims the entire administration of old age security in order to institute its own pension plan.[65]

56. Social assistance, resource development, working conditions[66], regional development, manpower and employment policy, social security, health services, health insurance, education, roads and land use planning are areas of provincial jurisdiction. They are encompassed by the rights and urgent needs of the provinces which are in a better position than the federal government to have an effective and lasting effect on these areas.[67]

57. In all areas that are wholly or partially within its jurisdiction, Québec henceforth intends to play a direct international role, in accordance with its personality and appropriate to its rights In addition, Québec intends:

    a) to implement international agreements, concluded by the federal government, dealing with issues of provincial jurisdiction;

    b) to participate actively and personally in developing international agreements that interest it directly;

    c) to participate in the activities of certain international organizations of a non-political nature;

    d) to play a direct role in areas that have acquired international importance because of the proliferation of contacts between countries.[68]

58. Québec views social security as an area of provincial jurisdiction, for constitutional, cultural and practical reasons.[69]

Shared-cost programs and conditional subsidies in given sectors: See paragraphs 64-66.

c) Unilateral powers

59. It must be clearly established as one of the fundamental rules of our federalism that the exceptional powers of Parliament must remain exceptional in nature, and not be used to invade areas that normally lie within provincial jurisdiction.[70]

••• Language rights

60. The primacy of French in Québec —namely its widest possible use on a daily basis—is an essential condition for bilingualism and biculturalism in Canada.[71]

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[65] 65. Statement by Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 52, Queen's Printer, 1964, and government of Québec, White Paper on the Québec Pension Plan, 1965. The Lesage government, using the opting out provision of the federal legislation instituting the Canada Pension Plan, established a Québec pension plan in 1965. See Québec Pension Plan, S.Q. 1965, c-24. See also the resolution of the Québec Legislative Assembly dated June 15, 1964 authorizing the Constitutional amending procedure for 1964 (old-age pensions and supplementary benefits) (Part 3: document no. 7).

[66] 66. Brief submitted by Québec at the Conference on Poverty, Ottawa, December 7-10, 1965, p. 17.

[67] 67. Government of Québec, declaration by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965 (see the entire declaration). Moreover, a White Paper from the ministère des Affaires culturelles (1965), which was not tabled in the Legislative Assembly but was made public by the newspaper *La Presse* in September 1966, states that, under the Constitution, Québec has exclusive responsibility in cultural affairs, particularly in terms of defending and promoting French-language culture within its territory, p. 24.

[68] 68. Speech by Paul Gérin-Lajoie, Vice-President of the Québec Executive Council and Minister of Education, before the Montréal Consular Corps, Montréal, April 12, 1965 (See part 2 of this document).

[69] 69. Government of Québec, statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 16.

[70] 70. *Ibid.*, p. 27.

[71] 71. Speech by Jean Lesage to the Reform Club of Montréal, March 1, 1965.

••• Intergovernmental policy

a) Conducting intergovernmental relations

61. Québec announces that it will invite all provincial Premiers to a meeting to decide whether permanent interprovincial relations should be established.[72]

62. Cooperative federalism does not mean simply obtaining the consent of the provinces to centralizing policies. Rather, for Québec, it means the beginning of a new era in federal-provincial relations and the dynamic adaptation of Canadian federalism. Federalism should express itself in three ways: 1) regular cooperation when decisions are made concerning new policies; 2) constant consultation on the application of policies; 3) sufficient financial resources granted to the provinces to enable them to carry out their greater responsibilities.[73]

Intergovernmental consultation regarding economic policies: See paragraph 52.

63. Québec considers that henceforth, in the normal course of events, federal actions in the regions of Québec will take place through Québec's administrative structures, after it has approved the objectives and means used. Otherwise, there is the possibility that policies based on differing assumptions could nullify each other.[74]

b) Financial aspects of federalism

64. Québec is resolved to end the system of shared-cost programs and, consequently, has withdrawn from such programs instituted by the federal government and demands either fiscal compensation or the tax point equivalent. These shared-cost programs cause costly duplication, reduce provincial initiative in areas recognized by the Constitution to be within provincial jurisdiction and distort the order of priorities established by the provinces. Experience shows that quite often these shared-cost programs do not allow provinces to use their own revenues as intended while conforming to local conditions.[75]

65. Québec decides to accept on a temporary basis and maintaining full sovereignty, the conditional grants distributed to the other provinces by the federal government (hospital insurance and TransCanada Highway).[76]

66. Québec demands that the federal government transfer to Québec, in the form of tax equivalents, the amounts the federal government wanted to allocate to programs that encroach on provincial jurisdiction, namely student loans and academic allowances.[77]

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[72] Government of Québec, opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 28.

[73] Speech by Jean Lesage, Université de Moncton, May 17, 1964, p. 2.

[74] Government of Québec, statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 19-22, 1965, p. 9.

[75] Government of Québec, opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 31 and 35. Statements by Jean Lesage, Federal-Provincial Conference, Ottawa, November, 26-29, 1963, p. 49, Queen's Printer, 1964 and Government of Québec, Federal-Provincial Conference, Québec, March 31 and April 1, 1964, p. 10 et seq. (See part 2 of this document). See also the *Act respecting the replacement of joint programs by tax abatement*, Q.S. 1965, c. 8.

[76] Government of Québec, opening statement by Jean Lesage, Federal-Provincial Conference, Ottawa, July 25-27, 1960, p. 32.

[77] Government of Québec, statement by Jean Lesage, Federal-Provincial Conference, Québec, March 31 and April 1, 1964, p. 21-23.

67. Québec demands a new tax distribution that will enable the provinces to concentrate on developing their human capital and carry out their responsibilities in terms of economic development. Québec demands 25 % of personal income tax, 25 % of corporate income tax and 100 % of succession duties, including the tax on gifts inter vivos.[78]

68. Taxation is the economic growth instrument over which Québec still exercises the least amount of control [...]. Unless there is during the coming months a distinctive turnaround in federal policy regarding taxation and the distribution of fiscal powers, we will not feel confident with the understanding that the central government has of the confederate regime. [...] Nevertheless, once again because the distribution of sources of revenue between the various governments of Canada continues to be unacceptable, the people of Québec cannot immediately undertake initiatives that they have deemed to be absolutely important.[79]

Financial autonomy of the provinces:
See also paragraph 62.

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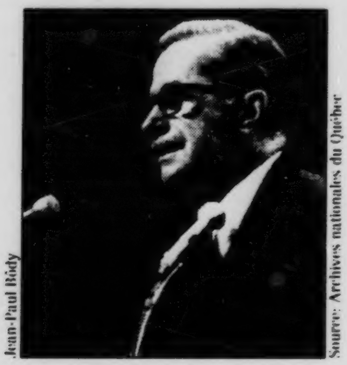
[78] Jean Lesage, Budget Speech, April 14, 1961, p. 78 and statement by Jean Lesage to the Québec Legislative Assembly, *Journal des débats*, January 16, 1964, p. 72. This demand was repeated many times at other Federal-Provincial Conferences (July 1960 and November 1963).

[79] Jean Lesage, Budget Speech, April 5, 1963, Québec Legislative Assembly, *Journal des débats*, April 5, 1963, p. 901-902 (quotation).

GOVERNMENT OF DANIEL JOHNSON, Sr.

(JUNE 16, 1966 TO SEPTEMBER 26, 1968)



Jean-Paul Bédy

Source: Archives nationales du Québec

••• Status of Québec

69. A new Constitution should be designed so that Canada is not solely a federation of ten provinces, but a federation of two nations equal in law and in fact. From an institutional standpoint, a truly bi-national order should be established for the entire country, where the agents of the two cultural communities could work together, on an equal footing, to manage their common interests.[80]

70. The object of the Constitution must not solely be to federate territories, but also to associate as equals two linguistic and cultural communities, two founding peoples, two societies, two nations in the sociological sense of the term. A Canadian constitution must be the product of an agreement between the two nations that make up the people of Canada, and must recognize the principle of the legal equality of the two cultural communities.[81]

71. The Canadian Constitution must take into account the fact that Québec has a special role to play in achieving cultural equality.[82]

72. French Canadians, drawing on their majority situation in Québec, must be able to develop structures, institutions and an environment in Québec that are perfectly attuned to their culture and their aspirations.[83]

Québec, the home of the French Canadian nation: See paragraph 77.

73. Québec prefers to live within a constitutional system that is sufficiently decentralized to take Québec's situation into account, though without preventing other provinces from leaving to the federal government, or carrying out jointly with it, those responsibilities they do not wish to assume.[84]

••• Constitutional reform process

74. If it is to be viable, the Canada of tomorrow must be founded on a new constitution [...]. The constitution must allow for the association of two societies, their cooperation within common institutions, the respect of fundamental collective rights and the normal aspirations of each society.[85]

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[80] Daniel Johnson, *Égalité ou indépendance, 25 ans plus tard*, Montréal, VLB éditeur, 1990, see part three entitled "Une constitution nouvelle."

[81] Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, Office d'information et de publicité du Québec, p. 63 (See part 2 of this document).

[82] Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968. These proposals had been approved by Daniel Johnson (See *Les positions traditionnelles du Québec sur le partage des pouvoirs 1900-1976*, gouvernement du Québec, ministère des Affaires intergouvernementales, Éditeur officiel du Québec, 1978, p. 9).

[83] Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 57 (See part 2 of this document).

[84] *Ibid.*, p. 59-60.

[85] Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 42 (quotation).

75. The new constitutional proposal must have four objectives: 1) clearly define the guiding principles of political life in Canada; 2) establish a new distribution of powers and resources that will allow the French Canadian nation to flourish and English Canada to develop freely; 3) institutionalize or implement intergovernmental mechanisms for consultation, coordination and action; 4) change the way certain existing Canadian institutions and structures operate, modernize others and create new ones so that, overall, they reflect Canada's bi-national reality.[86]

76. Canada should call itself "Canadian Union" and should eventually become a republic.[87]

••• Distribution of powers

a) General principles

77. The equality that must be established between Canada's two cultural communities depends not only on a territorial extension of bilingualism, but even more on greater powers for Québec, the home of the French Canadian nation.[88]

78. To ensure the equality of the French Canadian nation, Québec needs greater powers. It wants to make its own decisions in certain areas: 1) development of its human resources (i.e. every aspect of education, social security and health); 2) economic affirmation (i.e. the power to implement economic and financial mechanisms); 3) cultural expression (arts, letters and the French language); 4) the influence of the Québec community.[89]

79. Québec is seeking greater decentralization of powers than currently exists.[90] The Québec government proposes a new distribution of powers whereby all provinces would initially be attributed identical constitutional powers, and a constitutional provision would allow administrative or legislative delegation of powers to the federal government. The provinces themselves, under the new system, would decide the effective extent of their own responsibilities [...]. We feel such a situation would not be incompatible with federalism and such solutions should be embraced if they become necessary because of the sociological reality of the country.[91]

80. Québec wants to strip Ottawa of the ability to constantly intervene in provincial affairs by virtue of what are called indefinitely extensible powers.[92]

81. The Constitution should make formal provisions for the delegation of legislative powers.[93]

Charter of human rights and distribution of powers: See paragraphs 88 and 90.

b) Sectorial jurisdictions

82. Québec considers the following sectors to be within its exclusive jurisdiction:

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[86] Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 43 (quotation).

[87] Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

[88] Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 64 (See part 2 of this document).

[89] Statement by Daniel Johnson, fourth meeting of the Federal-Provincial Tax System Committee, Ottawa, September 14-15, 1966 in *Le gouvernement du Québec et la Constitution*, 1968, p. 4; see also the preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 45.

[90] *Ibid.*, p. 44 et seq.

[91] *Ibid.*, p. 47 (quotation); see also the opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 59-60 (See part 2 of this document).

[92] Speech by Daniel Johnson, Union nationale benefit dinner, Montréal, February 25, 1968.

[93] Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

culture, adult education, university research[94], vocational training programs, cooperative training programs and training programs for the jobless[95], urban development and housing, municipal structure, municipal powers and land use planning.[96]

83. The federal government must not have sole jurisdiction over the allocation of broadcast frequencies. Québec cannot tolerate much longer being excluded from an area in which its vital interest is so clear.[97]

84. As regards sectorial jurisdictions, Québec's constitutional demands can be expressed as follows[98]:

i) In addition to agriculture and immigration, statistics, the census, bankruptcy, radio, television and film, farm products marketing, food and drugs should be areas of joint jurisdiction. In the event of conflict, priority should be given, on a case by case basis, either to Union (federal) legislation, or State (provincial) legislation.

ii) Education (in all its forms, at every level) and social security (including all social allowances, old age pensions, family allowances, health and hospitals, manpower placement and training) should be assigned to the provinces exclusively.

iii) The following areas should also be placed under exclusive provincial jurisdiction: divorce; business incorporation (except those mentioned as being under federal jurisdiction); the securities industry and control of financial institutions other than banks; labour relations and working conditions for all companies doing business within a province's borders; road transportation; integration of immigrants; public works within a province's borders (except those relating to an area of federal jurisdiction); rehabilitation of inmates; exploration for, conservation and development of resources; land use planning, municipal organization, urban planning, urban development and housing; recreation, leisure and sports.

iv) It should be recognized that the provinces have the authority to negotiate and sign agreements with foreign governments on matters within their internal jurisdiction. Provincial governments should be regularly invited to participate in Canadian delegations at international conferences and meetings of international organizations to which Canada belongs and which affect areas of provincial jurisdiction. Similarly, the provinces should have the right to attend international conferences of interest to them but in which Canada does not participate. In addition, they should have a greater role in foreign aid.[99]

v) The provinces should have access to all sources of tax revenue, but property taxes and succession duties should be reserved for them exclusively.

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[94] Statement by Daniel Johnson, Federal-Provincial First Ministers Conference, Ottawa, October 24-28, 1966, p. 25-27.

[95] Declaration by Daniel Johnson, meeting of the Tax System Committee, October 26, 1966, p. 63.

[96] Statement by Daniel Johnson, Federal-Provincial Conference on Housing and Urban Development, Ottawa, December 11-12, 1967, p. 53, Privy Council Office, Ottawa, 1968.

[97] Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 81.

[98] Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

[99] See also Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 79 and 80.

vi) The provinces should be the owners of the public domain, which should extend to the continental shelf. They should have unlimited expropriation powers, except over federal property.

85. There are two main reasons why the Québec government is so insistent on regaining full control over social security: first, because the presence of two governments in this field prevents effective social security planning, allows for contradictions between various programs and leads to administrative duplication and waste; second, because social security measures affect the nation's vitality as a society.[100]

Control over expenses in Québec's sectors of jurisdiction: See paragraph 99.

c) Unilateral powers

86. The federal Parliament's reserve and disallowance powers and the declaratory power should be eliminated. The residuary power should be transferred to the provinces.[101]

87. The federal spending power should be limited to federal matters alone. However, unconditional grants could be paid to provinces either according to a general equalization formula or to stabilize their revenue.[102]

Shared-cost programs: See paragraphs 99-101.

••• Individual and language rights

88. The new Constitution must include a Charter of human rights applying to the constitutional powers of the central government. For its part, the Québec government intends to add a Charter of human rights to the Constitution of Québec which would apply to areas of Québec jurisdiction.[103]

89. In a country like ours, it is fundamental that the Constitution recognize the collective rights of the two cultural communities [...]. We do not want to impose our language indiscriminately on all Canadians, but we do want French Canadians, wherever they are in sufficient numbers, to be able to serve their country and be served in their language, as full-fledged citizens.[104]

90. A distinction must be made between individual rights and collective rights. The former are within provincial jurisdiction (civil rights). That is why Québec intends to incorporate a Charter of human rights into its own Constitution.[105]

91. As for collective rights (rights of language minorities), Québec agrees that they be protected in the Constitution. But it considers it is even more pressing and would be more effective to embody them in federal and provincial institutions.[106]

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[100] See also Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 76 (quotation).

[101] Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 45.

[102] Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 75 and seq. See also working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

[103] Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 44 (quotation).

[104] Opening statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 22 (quotation).

[105] Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 61 (See part 2 of this document).

[106] *Ibid.*, p. 61.

92. In a unitary country with a homogeneous society, declarations of rights can be seen as summations of the moral philosophy accepted by the entire population, and the rights of citizens can be derived therefrom. The result is to entrench in the Constitution a certain homogeneity of ethical concepts whose application is the responsibility of the courts. We feel that in a federal system and particularly in the case of Canada, it would be a serious political mistake to proceed in that way. Québec's civil law tradition and the way in which it recognizes and protects fundamental rights are in fact significantly different from the procedure in common law courts. If therefore we contemplate a declaration of rights that is so basic that the highest constitutional court in Canada must make these rights explicit, we are obliged to demand that the formation of a constitutional court be examined first.[107]

93. The issue of fundamental rights cannot be resolved without agreement on certain basic reforms, in particular the creation of a genuine constitutional court.[108]

••• **Institutions**

94. The Constitution should provide for the establishment of a constitutional court of which at least 2/3 of whose judges would be appointed by the provinces.[109] The composition of this court should reflect the federal character of common institutions and the Canadian cultural duality.[110]

Constitutional court and charter of human rights: See paragraphs 92-93.

95. The provinces should be responsible for the establishment of high courts and the appointment of their judges, both for the administration of federal and provincial laws.[111]

96. Québec requests the institutionalization of federal-provincial and interprovincial conferences.[112]

Intergovernmental machinery: See also paragraph 75.

97. It would be useful to examine the possibility of transforming the existing Senate into a genuine federal House, with a bi-national character.[113]

98. The composition of the Bureau of Broadcast Governors and the Canadian Broadcasting Corporation should better reflect the bicultural reality of the country It is therefore important that Québec itself appoint a proportion, to be determined, of the members of the boards of directors of these agencies.[114]

Institutional reform: See also paragraph 75.

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[107] Initial reactions of the Québec government to the White Paper tabled in the House of Commons by Pierre Elliott Trudeau, federal Minister of Justice, February 1, 1968, p. 4 (quotation).

[108] Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 93 and seq., especially p. 98.

[109] Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

[110] Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 50.

[111] Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

[112] Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 48 (quotation).

[113] *Ibid.*, p. 50 (quotation).

[114] Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 81.

••• Intergovernmental policy

Financial aspects of federalism

99. Québec should have sole responsibility within its borders for public spending on all forms of education, old age security, family allowances, health, manpower training and placement, regional development and, in particular, assistance programs for municipalities, research and the fine arts as well as culture and, in general, any other socio-cultural service within the jurisdiction of Québec. Existing federal programs in these areas would be assumed by Québec, which, if necessary, would maintain their transferable nature.[115]

100. Québec has no intention of renewing the joint programs from which it has withdrawn. Nor does it plan to enter into new joint programs dealing with areas of exclusive provincial jurisdiction. Instead, it will demand unconditional financial compensation.[116]

101. Joint programs are an obstacle to the free development of Québec society. They impose priorities that could conflict with those it would otherwise establish, not to mention that they reduce its real budgetary independence [...]. For a nation like ours, joint programs freeze our fiscal resources and deprive Québec of total control over areas of activity that by law lie within its jurisdiction. In general, then, there is an incompatibility between the system of joint programs and the French Canadian nation's efforts to achieve its essential objectives.[117]

102. Québec demands a net increase in resources that enable it to carry out its constitutional responsibilities.[118] Québec demands 100% use of the three major direct taxes: personal income taxes, corporate income taxes and succession duties. This demand is based on a transfer of tax fields from the federal government to the provinces and on the repatriation of federal programs in areas of provincial jurisdiction, in return for tax compensation.[119]

103. Any major rearrangement of the structure of shared taxes must result from the concerted action of all governments.[120]

New distribution of resources: See paragraph 75.

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[115] Statement by Daniel Johnson, fourth meeting of the Federal-Provincial Tax System Committee, Ottawa, September 14-15, 1966, in *Le gouvernement du Québec et la Constitution*, 1968, p. 7. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 46.

[116] Statement by Daniel Johnson, fourth meeting of the Federal-Provincial Tax System Committee, Ottawa, September 14-15, 1966, in *Le gouvernement du Québec et la Constitution.*, 1968, p. 5-6.

[117] *Ibid.*, p. 5 (quotation).

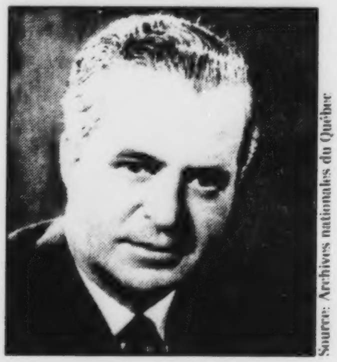
[118] *Ibid.*, p. 7-8.

[119] *Ibid.*, p. 8.

[120] Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 82.

GOVERNMENT OF JEAN-JACQUES BERTRAND

(OCTOBER 2, 1968 TO APRIL 29, 1970)



Source: Archives nationales du Québec

••• Status of Québec

104. What is important for French Canadians in Québec is not to be able to speak their language anywhere in Canada, but to be able, collectively, to live in French, to build a society in their image. That is possible only if the Québec government has powers in proportion to the tasks the population expects it to carry out.[121]

105. It is essential that French Canada, of which Québec is the cornerstone, have the conviction that it will find all the elements necessary for its development within the Canadian federation.[122]

••• Constitutional reform process

106. What we must look for is the constitutional system that can reconcile the full development of both cultural communities in Canada with the imperatives of economic solidarity.[123]

107. A constitutional declaration of human rights must be passed at the same time as the new Constitution, but not before. The most important constitutional problem is the distribution of powers between the two orders of government.[124]

••• Distribution of powers

a) General principles

108. Québec believes freedom of choice will always be necessary in some areas, not only to ensure that Québec has all the autonomy it needs, but also to enable the other provinces to confer on the central government, or to carry out jointly with it, the tasks they do not want to perform solely on their own initiative.[125]

109. Québec demands that the future Canadian constitution be adaptable to the needs of each province. While Québec seeks greater decentralization of power, those provinces that want to should have the freedom to delegate some of their powers to the federal government. That way, Québec could exercise the powers it feels it needs, without preventing a greater degree of centralization or federal intervention elsewhere.[126]

110. The distribution of powers between the two orders of government must

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[121] Opening statement by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 32, Queen's Printer, 1969 (See part 2 of this document).

[122] *Ibid.*, p. 35.

[123] *Ibid.*, p. 32.

[124] Statement by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, Queen's Printer, 1969, p. 314-315.

[125] Opening statement by Jean-Jacques Bertrand, Constitutional conference, second meeting, Ottawa, February 10-12, 1969, p. 36, Queen's Printer, 1969 (See part 2 of this document).

[126] Statement by Jean-Jacques Bertrand, Constitutional Conference, third meeting, Ottawa, December 8-10, 1969, p. 10-11, Queen's Printer, 1970.

depend not on the good will of the central authority, but on a written constitution that is recognized and respected by all as the fundamental law of the country.[127]

111. The country must adopt a taxation and financial structure that, after a net transfer of resources to the provinces, will enable each of the two sectors of government to satisfy its obligations as effectively as possible.[128]

Charter of human rights and distribution of powers: See paragraphs 107, 119, 120.

b) Sectorial jurisdictions

112. Québec endorses the constitutional proposals submitted July 17, 1968 to the Standing Committee of Officials on the Constitutional Conferences, though they do not express the Québec government's final position.[129]

113. Québec considers it has jurisdiction in the following areas: educational radio and television, cultural affairs, urban affairs, underwater mining resources, the securities industry, higher education, university research, water, air and soil pollution, road transportation, foreign relations in education or other sectors of provincial jurisdiction, social development, succession duties[130] and health insurance.[131]

114. Marriage, divorce and, in that case, the establishment of family courts should be within Québec's jurisdiction.[132]

115. Québec proposes to unify and assume control of the federal and Québec family allowance systems.[133] In addition, Québec expresses its firm intention to develop its own family policy.[134]

116. Social security, including social allowances, old age pensions, family allowances, health and hospitals, manpower training and placement should be exclusively under provincial jurisdiction.[135] The responsibility for social security policy and development cannot be divided. This responsibility, both for cultural and efficiency reasons, must be assumed solely by the Québec government.[136]

117. Québec can accept neither that the federal government act unilaterally to manage or control pollution in provincial bodies of water, nor that its joint action with the provinces be based on the national interest.[137]

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[127] Opening statement by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 32, Queen's Printer, 1969 (See part 2 of this document).

[128] *Ibid.*, p. 18.

[129] *Ibid.*, p. 29.

[130] *Ibid.*, p. 33-34.

[131] Government of Québec, statement by Jean-Jacques Bertrand, Federal-Provincial Conference of Finance Ministers, Ottawa, November 4-5, 1968, p. 16.

[132] Statement by Jean-Jacques Bertrand, Constitutional Conference, third meeting, Ottawa, December 8-10, 1969, p. 11.

[133] Brief by Jean-Paul Cloutier, Minister of the Family and Social Welfare, Federal-Provincial Conference, Ottawa, January 16-17, 1969.

[134] Jean-Paul Cloutier, *Orientation pour une nouvelle politique des allocations familiales du Québec*, Ministère de la Famille et du Bien-être social, Québec, November 1969.

[135] Statement by Jean-Jacques Bertrand, Constitutional Conference, third meeting, Ottawa, December 8-10, 1969, p. 11.

[136] *Ibid.*, p. 10 and 21.

[137] Government of Québec, statement by Jean-Jacques Bertrand, Federal-Provincial Conference, Ottawa, February 16-17, 1970, p. 7 (quotation).

••• Individual and language rights

118. Canada's constitutional problem cannot simply be reduced to a question of individual or language rights. The important point, for French Canadians in Québec, is not to be able, individually, to speak their language even in regions of the country where there is little chance of its being understood; rather, it is to be able to collectively live and work in French, to build a society in their own image.[138]

119. The creation of a charter of provincial rights is just as important to Québec as the creation of a charter of human rights.[139]

120. It is important to ensure that the constitutional recognition of human rights not change the distribution of powers between governments. We would not accept that Parliament legislate in areas of provincial jurisdiction on the pretext that it is implementing the declaration of human rights.[140]

Charter of human rights and Québec's priority regarding the distribution of powers: See paragraph 107.

••• Institutions

121. The federated states, i.e. the provinces, should be responsible for the establishment of higher courts and provincial courts of appeal and for the appointment of their judges, both for the administration of federal and provincial laws. However, the central legislature should maintain its existing power to establish federal courts for the administration of its own laws.[141]

122. The Constitution must provide for the establishment of a constitutional court and determine its composition and jurisdiction. At least two thirds of the judges of this court should be appointed by provincial governments.[142]

••• Intergovernmental policy

a) Conducting intergovernmental relations

123. A judicious management of the economy requires much closer cooperation between governments in certain areas of strategic importance.[143]

b) Financial aspects of federalism

124. Governments responsible for certain well-defined fields of activity must also have access to resources they can allocate depending on how they intend to carry out these responsibilities. Conditional transfers, grants, and subsidies are therefore completely unacceptable.[144]

Financial autonomy of the provinces: See also paragraph 111.

125. Québec considers there is an urgent need for the federal government to regionalize its fiscal policy to take into account different economic conditions in various parts of the country.[145]

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[138] Opening statement by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 32, Queen's Printer, 1969 (See part 2 of this document).

[139] *Ibid.*, p. 35.

[140] Statement by Jean-Jacques Bertrand, Constitutional Conference, second meeting, Ottawa, February 10-12, 1969, p. 314 (quotation), Queen's Printer, 1969.

[141] *Ibid.*, p. 414-415 (quotation).

[142] *Ibid.*, p. 413.

[143] Government of Québec, statement by Jean-Jacques Bertrand, Federal-Provincial Conference of Finance Ministers, Ottawa, November 4-5, 1968, p. 18.

[144] *Ibid.*, p. 18.

[145] Government of Québec, statement by Jean-Jacques Bertrand, Federal-Provincial Conference, Ottawa, February 16-17, 1970, p. 4.

FIRST GOVERNMENT OF ROBERT BOURASSA

(MAY 12, 1970 TO NOVEMBER 15, 1976)

Source: Le Soleil

••• Status of Québec

126. The precise definition of Québec society within the Canadian federation remains a fundamental problem for Québec.[146]

127. The Québec government believes a genuine affirmation of Quebecers' cultural identity is possible within the federal system. Cultural affirmation means control by Québec, and the financial means and constitutional powers with which it can promote the cultural development of its population.[147]

128. Québec's constitutional policy is premised on the need and desire of Quebecers, first, to head a government that will enable them to develop their own cultural personality and, second, to participate in a prosperous bicultural federation which respects the distinct character of Québec society.[148]

129. Québec will seek to obtain recognition from the rest of Canada of its unique responsibility for the survival and development of French culture. Québec cannot yield this responsibility to others and must obtain the necessary constitutional guarantees to ensure this.[149] The constitutional review must recognize the cultural aspirations of Quebecers as expressed by all governments of Québec with the full support of the people of Québec.[150]

130. A new Canadian constitution would be unacceptable if it failed to clearly and concretely recognize the fact that Quebecers are different and form a distinct society that vigorously wants to maintain its social and cultural identity.[151]

Cultural affirmation of Québec: See paragraphs 134 and 166.

Cultural security and patriation of the Constitution: See paragraph 135.

••• Constitutional reform process

131. A prerequisite to constitutional reform is improved fiscal and economic relations between governments, with a view to implementing a new economic federalism.[152]

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[146] Government of Québec, statement by Robert Bourassa, Québec National Assembly, Standing Commission on the Constitution (Victoria Conference), *Journal des débats*, May 18, 1971, p. B-1274.

[147] Inaugural Speech to the second session of the 29th legislature, Québec National Assembly, *Journal des débats*, February 23, 1971, p. 7.

[148] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 6-7.

[149] Inaugural Speech to the first session of the 30th legislature, Québec National Assembly, *Journal des débats*, November 22, 1973, p. 22-23.

[150] Inaugural Speech to the third session of the 30th legislature, Québec National Assembly, *Journal des débats*, March 18, 1975, p. 1.

[151] Statement by Claude Castonguay, Minister of Social Affairs, before members of the Québec Club Richelieu, Québec, January 18, 1971.

[152] Government of Québec, statement by Robert Bourassa, Federal-Provincial Conference of Ministers of Finance, Winnipeg, June 5-6, 1970, p. 4.

132. The Québec government has always had a dual objective in terms of constitutional reform, i.e. decentralized federalism and the promotion of Québec's distinct personality.[153]

133. Québec cannot accept the proposed Victoria Constitutional Charter. This decision stems from the necessity to agree, as much as possible, on clear and precise constitutional texts, to avoid shifting to the judiciary a responsibility that belongs primarily in the political sector. As such, the texts dealing with income security still contain an uncertainty that squares poorly with the objectives inherent in any notion of constitutional review.[154]

134. Federalism represents for Quebecers the best means for attaining their economic, social and cultural objectives [...]. In keeping with Quebecers' clearly expressed desire in this sense, the government will devote its efforts to reinforcing Canadian federalism. As such, it feels that federalism must be decentralized in order to reflect the diversity of the regions of our country. This federalism must also guarantee provinces the freedom of action they need for fully assuming their responsibilities with regard to their citizens; this federalism must also allow the government of Québec to ensure the cultural future of the majority of its population.[155]

135. The patriation of the Canadian Constitution and the adoption of an amending formula could provide an opportunity for the recognition of Quebecers' cultural rights. In this regard, Québec has a duty to demand clear constitutional guarantees in sectors naturally linked to cultural security, of which communications and immigration have special significance. Quebecers will only agree to the patriation of the Constitution if that document provides them with guarantees as to the future of French culture.[156]

136. Québec proposes that provincial ministers meet at least once a year to review legal decisions of a constitutional nature, other questions related to the Constitution and, if necessary, to finalize any proposed amendment to the Constitution.[157]

••• Constitutional amending procedure

137. Québec proposes that the creation of new provinces be subject to the agreement of the existing provinces, according to the original *veto* formula of the Victoria Charter.[158]

••• Distribution of powers

a) General principles

138. In concrete terms, Québec's desire for decentralization means obtaining financial resources appropriate to provincial responsibilities, a clarification of these responsibilities in sectors such as regional development and management, and additional powers in the cultural and social fields.[159]

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[153] Statement by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 17.

[154] Statement by Robert Bourassa, Québec National Assembly, *Journal des débats*, June 23, 1971, p. 2738 (See part 2 of this document); see also the communiqué by Robert Bourassa, June 23, 1971 (Part 3: document no. 9).

[155] *Ibid.* (quotation) [Translation].

[156] Speech by Robert Bourassa, Mont-Gabriel Symposium, August 24, 1975. See also the letter from Peter Lougheed, Premier of Alberta, on behalf of all provincial First Ministers, to Pierre Elliott Trudeau, Prime Minister of Canada, October 14, 1976.

[157] Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 11.

[158] *Ibid.*, Schedule 12.

[159] Opening statement by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 16; see also the Inaugural Speech to the third session of the 30th legislature, Québec National Assembly, *Journal des débats*, March 18, 1975, p. 1.

139.If Canada's bicultural character is to be preserved, and its preservation and development is one of Canada's basic objectives, then Québec must be in a position to guarantee the conditions for the development of its French reality. It will succeed by making maximum use of the powers it already holds, and by exercising certain additional powers that will increase the effectiveness and influence of its linguistic and cultural character.[160]

140.As far as maintaining and developing Québec's identity is concerned, we will base our position on an objective assessment indicating which order of government best serves the public.[161]

141.Québec has always promoted decentralized federalism, which alone is truly adapted to the variety of economic, social and cultural needs of Canadians in every region of the country.[162]

142.Québec would favour the inclusion of a provision in the Constitution enabling delegation of legislative powers between the two orders of government. Legislative delegation would add more flexibility to an often overly rigid distribution of powers. It would correct legal interpretations that failed to respect the spirit of the Constitution, and make it possible to develop regionally based programs. In addition, delegation of powers establishes various degrees of centralization or of decentralization in the relations between the central government and the provinces and therefore is consistent with the flexibility of federalism.[163]

143.The Québec government is in the best position to understand and define the needs of the population of Québec, especially with regard to education, culture, land use planning and social policy. This principle is valid for the entire constitutional issue.[164]

Decentralization and constitutional reform:
See also paragraphs 132 and 134.

Charter of human rights and distribution of powers:
See paragraphs 160 and 161.

b) Sectorial jurisdictions

144.Québec claims priority of responsibility for the design of health, social services, income security and manpower policies, while recognizing the essential role of the federal government in securing an acceptable standard of living for all Canadians. Nonetheless, the administration of social policy programs would be shared, however, according to whether the type of program defined by each province lends itself better to a centralized administration, or demands a decentralized management.[165] The important point in the case of programs administered by the federal government is that they be administered under an income security policy established by the provinces and that a satisfactory link be maintained with them.[166]

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[160] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 6 (quotation).

[161] *Ibid.*, p. 4.

[162] Statement by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 15.

[163] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 10.

[164] Speech by Claude Castonguay, Minister of Social Affairs of Québec, Annual Meeting of the Society of Actuaries, Toronto, November 1971.

[165] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 10-11. See also statement by Robert Bourassa, Victoria Constitutional Conference, June 14, 1971, p. 17.

[166] Statement by Claude Castonguay, Minister of Social Affairs of Québec, Federal-Provincial Conference of Ministers of Social Welfare, Ottawa, January 1971.

Social policies: See also paragraphs 133, 138 and 143.

145.The organization and distribution of health care and social services lies clearly within the exclusive jurisdiction of the provinces.[167]

146.Housing, recreation, local public services facilities, urban development and land use planning are within the provinces' jurisdiction exclusively. The federal government's role in these areas should be limited to financing.[168]

147.Québec wants take an active part in developing and defining government communications policies.[169] Furthermore, Québec should be able to control the development of communications within its borders, establish the general principles that will promote the social, cultural and economic development of the community to be served, regulate the cable and broadcasting sectors, as well as communications companies (programming; rates, except for radio and television) and participate on the boards of directors of federal communications agencies.[170] From a constitutional standpoint, Québec proposes that the provinces acquire preponderant legislative jurisdiction over communications (communications networks within the province).[171]

Communications: See also paragraph 135.

148.Québec demands the development of mechanisms which ensure that the contribution of Canada and Québec to international development will be the result of common efforts.[172]

149.The tax on companies that develop natural resources should be within the exclusive jurisdiction of the provinces. Québec proposes that succession duties and gift taxes also come under exclusive provincial control and agrees to the principle of open access to other tax sources for both levels of government.[173]

150.As far as energy is concerned, neither the federal government's unilateral action nor the uncoordinated actions of provincial governments will enable us to achieve the goals that must be attained. Only joint cooperative efforts by both levels of government and by all governments will succeed.[174]

151.As far as immigration is concerned, provincial participation would be to the federal government's benefit, since they are in the best position to know their manpower requirements and the type of immigrants they would prefer to receive.[175]

152.Québec demands, first, that a Canadian immigration policy be voluntary and involve the active participation of the provinces, in accordance with section 95 of the Constitution. Second, the distribution of these joint powers must be clear: Ottawa will have exclusive powers over the issuing of visas[176], but the provinces will acquire preponderant legislative jurisdiction in terms of settlement, integration and placement of immigrants. In addition, the provinces must participate in the recruiting and selection of foreign nationals who want to immigrate within their borders and must conclude agreements to that effect with the government of Canada.[177]

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[167] Statement by Claude Castonguay, Minister of Health, Federal-Provincial Conference of Ministers of Health, Ottawa, December 9-11, 1970, Schedule 3, p. 5 (quotation).

[168] Government of Québec, statement by Robert Bourassa, Federal-Provincial Conference of the First Ministers, Ottawa, November 15-17, 1971, p. 49.

[169] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 13.

[170] Jean-Paul L'Allier, Minister of Communications, *Le Québec maître d'oeuvre de la politique des communications sur son territoire*, Éditeur officiel du Québec, 1973, p. 89-103.

[171] Joint proposal by Québec and Saskatchewan, summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 8. See also statement by Jean-Paul L'Allier, Minister of Communications, Federal-Provincial Conference on Communications, Ottawa, November 29-30, 1973.

[172] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 13.

[173] Notes for Robert Bourassa on the tax reform proposal, Federal-Provincial Committee of Ministers of Finance and Provincial Treasurers, Winnipeg, June 5-6, 1970, p. 23 and government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 16-17.

[174] Declaration by Robert Bourassa, Federal-Provincial Conference of the First Ministers on Energy, Ottawa, June 22-23, 1974.

[175] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 13.

Immigration: See also paragraph 135.

153. The elements of the Constitution affecting the administration of justice should be revised to strike a balance between federal and provincial responsibilities.[178] In addition, the respective responsibilities of the federal government and the provinces over custody of inmates should be redefined[179] and the provinces should have jurisdiction over narcotics prosecutions, such as those relating to the Criminal Code.[180]

154. Québec proposes that the legislature of each province have exclusive jurisdiction over arts, letters and cultural heritage within the province.[181] The Québec government must have sole jurisdiction over Québec's heritage. Therefore, there is no question of any element of Québec's heritage being included as part of some Canadian heritage determined by the federal government.[182]

Culture: See also paragraph 138.

c) Unilateral powers

155. Québec proposes that the federal government not exercise its power to pass laws regarding peace, order and good government in areas of exclusive provincial jurisdiction except in the case of a national emergency.[183]

156. The federal government must not use its declaratory power unless the province concerned gives its assent.[184]

157. Though ideally the federal power to spend in areas of provincial jurisdiction should not exist, Québec is prepared to agree to it provided any province that does not participate in a joint program be entitled to financial compensation that would guarantee its freedom to abstain.[185]

Shared-cost programs: See also paragraphs 171-173.

158. Québec proposes that the federal spending power in areas of provincial jurisdiction be subject to the prior

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[176] Jean Bienvenue, Minister of Immigration, *La position du gouvernement du Québec à la suite de la publication du Livre vert fédéral sur la politique canadienne d'immigration*, April 1975, document tabled in the Québec National Assembly on May 23, 1975.

[177] Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 7.

[178] White Paper, *La justice contemporaine*, presented by Jérôme Choquette, Minister of Justice, April 1975, p. 32.

[179] Statement by the Minister of Justice, Federal-Provincial Correctional Sector Conference, Victoria, May 22-23, 1975.

[180] Press release, Federal-Provincial Conference of Attorneys General, Vancouver, June 17-18, 1976.

[181] Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 7.

[182] Speech by Jean-Paul L'Allier, Minister of Cultural Affairs, Heritage Canada annual banquet, September 17, 1976.

[183] Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 5.

[184] *Ibid.*, Schedule 6.

[185] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 16.

agreement of the majority of governments (according to the Victoria Charter formula), and that each province have the authority to decide how amounts allocated for use within its borders are to be applied to implement the programs.[186]

159. Québec recommends that the residuary power be transferred to the provinces.[187]

••• Individual and language rights

160. The Québec government favours the adoption of a Constitutional Charter of human rights. However, this charter should not prevent the adoption of complementary charters at the federal or provincial level, nor change the distribution of powers.[188]

161. Considering that in the majority of cases, protection of human rights comes under provincial jurisdiction, Québec feels it is essential that the respective fields of application of federal and provincial legislation be clearly defined.[189]

162. Language legislation constitutes recognition that in areas that embody Québec's distinct characteristics, legislation passed for the country as a whole is not necessarily appropriate for Québec society. With Bill 22, the government acknowledges that only Québec can legislate in this sector.[190]

••• Institutions

163. Québec requests the institutionalization of an annual First Ministers Conference on the economy to be used as a special vehicle for coordinating and planning federal and provincial economic policies.[191]

164. Québec believes that the creation of a constitutional court representative of the federation is essential to maintaining a new constitutional balance.[192] Moreover, the provinces should be able to submit names of candidates for appointment to the Supreme Court and refer legal questions to the Supreme Court and that their approval be required for changing the jurisdiction of the Supreme Court.[193]

••• Intergovernmental policy

a) Conducting intergovernmental relations

165. The Québec government must be involved in the central government's decision-making process on questions with a significant influence on Québec's economic, social and cultural development.[194]

166. The government's main priorities in terms of federal-provincial relations are: 1) the issue of financing, with a view to achieving a distribution of resources

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[186] Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 3.

[187] *Ibid.*, Schedule 4.

[188] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 19.

[189] Declaration by François Cloutier, Minister of Intergovernmental Affairs, Federal-Provincial Conference on Human Rights, Ottawa, December 11-12, 1975, p. 3.

[190] Speech by Jean-Paul L'Allier during the debate on the second reading of Bill 22, Minister of Communications, Québec National Assembly, *Journal des débats*, July 13, 1974, p. 1789-1790.

[191] Government of Québec, statement by Robert Bourassa, Federal-Provincial Conference of the First Ministers, Ottawa, November 15-17, 1971, p. 10-11.

[192] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 20.

[193] Summary account of proceedings, Interprovincial Meeting of Ministers of Intergovernmental Affairs and Attorneys General, Edmonton, August 1976, Schedule 14.

[194] Government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 5. See also statement by Robert Bourassa, Québec National Assembly, Standing Commission on the Constitution (Victoria Conference), *Journal des débats*, May 18, 1971, p. B-1273.

that is more consistent with the constitutional responsibilities of the federal and provincial governments; 2) economic development, specifically concerning regional disparities and unemployment; 3) social development, especially income security problems; 4) Québec's cultural affirmation.[195]

b) Financial aspects of federalism

167. Each order of government must have access to sufficient revenue to cover the cost of programs under its jurisdiction.[196]

Financial autonomy: See also paragraphs 138 and 166.

168. Regarding fiscal and economic issues, coordination of federal and provincial initiatives needs to be improved both to enable Canadian federalism to carry out its function of redistributing wealth across the country and to give rise to genuine cooperative efforts.[197]

169. Redistribution of wealth among provinces is not limited to equalization payments. The regional effects of the central government's total revenue and spending must also be taken into account, so that the shortfall in federal spending in Québec does not cancel the redistributive effect of equalization.[198]

170. Québec proposes the creation of an economic assistance fund that would play a short-term compensating role by correcting the regional impact of an unfavourable economic situation or of federal policies that exacerbate the unemployment rate in some provinces. Financed from certain federal taxes, this fund would make both unconditional payments and loans at preferred interest rates.[199]

171. Québec announces that it wishes to end the provisional arrangements concerning hospital insurance and health insurance programs and replace them with a definitive opting-out formula. This formula would involve unconditional payments.[200]

172. With respect to fiscal compensation for opting-out of shared-cost programs, Québec prefers to collect its own taxes rather than receive financial compensation.[201]

Shared-cost programs: See also paragraph 157.

173. Québec submits three proposals for the fiscal arrangements:

a) federal withdrawal from three joint programs (health insurance, hospital insurance, post-secondary education), in exchange for a satisfactory unconditional transfer to the provinces;

b) elimination of the tax receipts guarantee program and integration of the amounts involved in other transfers to the provinces including a substantial portion in equalization;

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[195] Inaugural Speech, Québec National Assembly, Journal des débats, March 15, 1973, p. 1 (quotation).

[196] Statement by Robert Bourassa, Federal-Provincial Conference of Ministers of Finance, Winnipeg, June 5-6, 1970, p. 26 and government of Québec, statement by Robert Bourassa, Constitutional Conference, Ottawa, September 14-15, 1970, p. 16-17.

[197] Government of Québec, statement by Robert Bourassa, Federal-Provincial Conference of the First Ministers, Ottawa, November 15-17, 1971, p. 2, 10 and 11.

[198] Government of Québec, statement by Robert Bourassa, Federal-Provincial Conference of Finance Ministers, Winnipeg, June 5-6, 1970, p. 38-40.

[199] *Ibid.*, p. 31-33 and statement by Robert Bourassa, First Ministers Conference, Ottawa, November 15-17, 1971, p. 22.

[200] Government of Québec, statement by Robert Bourassa, Federal-Provincial Conference of the First Ministers, Ottawa, November 15-17, 1971, p. 31.

[201] *Ibid.*, p. 40.

c) an equalization formula based on a global indicator of wealth that would equalize all or a fixed proportion of provincial, municipal and school revenues at a level above the national average.[202]

Economic federalism and constitutional reform:
See paragraph 131.

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[202] Opening statement by Robert Bourassa, Federal-Provincial Conference of the First Ministers, Ottawa, June 15-16, 1976.

GOVERNMENT OF RENÉ LÉVESQUE

(PRE-REFERENDUM PERIOD,
NOVEMBER 25, 1976 TO MAY 20, 1980)

Daniel Lessard

Source: Archives nationales du Québec

••• Status of Québec

174.The Sovereignty-Association Project[203]

The government of René Lévesque was elected in November 1976. Its program consisted in holding a referendum in Québec to address the issue of the Sovereignty-Association project with Canada.

In 1979, the government published a white paper[204] explaining its project that was submitted by referendum on May 20, 1980, a first exercise in popular consultation under the aegis of the Québec Referendum Act.

The Sovereignty-Association project sought Québec accession to political sovereignty within the framework of a new agreement for economic association with Canada. This meant establishing a new relation between Canada and Québec where both parties would be international entities and relations between them would no longer be governed by a constitution, but rather by a treaty of association. However, they would continue to have a single tariff and a single currency. The nature of the proposed association would be that of a monetary union.

The project specified several of the major characteristics of Québec sovereignty: adoption of all laws and taxes by the Québec National Assembly; the territorial integrity of Québec; creation of Québec citizenship; preservation of rights legally vesting in the anglophone minority; the Amerindian and Inuit communities would have institutions on their lands designed to protect the integrity of their societies and enable their free development; continuity in treaty-making affairs; participation and admission to certain international organizations; Québec courts alone would be empowered to administer justice in Québec.

As for the treaty on community association planned by the government of Québec, its purpose would be to preserve the current economic space. It would have defined shared areas of activity (free circulation of goods and individuals, monetary union) and those subject to the harmonization of national policies and legislation (railway, maritime and air transport, labour market regulations and right of establishment, cyclical policies, overall equilibrium of the balance of payments, monetary stability and defence).

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[203] Paragraph 174 is a synthesis of the government project.

[204] Government of Québec, *Québec-Canada: A New Deal. The Québec Government Proposal for a New Partnership Between Equals: Sovereignty-Association*. An extract from this white paper is reproduced in Part 3: see document no. 11. On the government project, see also the statement by René Lévesque regarding the referendum question before the Québec National Assembly, December 20, 1979 (See part 2 of this document).

In addition, the creation of certain common Québec-Canada institutions was considered, institutions that would be administered under the treaty. In this respect, the project included the creation of a Community Council, a Commission of Experts, a Court of Justice and a Monetary Authority (a parliamentary assembly could have also been examined without per se being included in the project). The operations of these institutions were to recognize the principle of legal equality among partners, which in some cases would be a right of *veto* for Québec and, in other cases, a deliberative voting power proportionate to its demographic and economic weight.

The mandate for negotiating Sovereignty-Association that the government asked of the population during the May 20, 1980 referendum was rejected, since the No vote was confirmed by 59.56% of the electors and the Yes vote received 40.44%.[205]

175. That the Members of the [National] Assembly do reiterate firmly and explicitly their belief in the principle that Quebecers only have the ability to decide on their constitutional future, in accordance with the rules and provisions that the Assembly will see fit to adopt.[206]

176. A lasting solution to the constitutional issue presupposes recognition of the Québec-Canada duality.[207]

••• Constitutional reform process

177. Québec will never agree, under the existing system, to the patriation of the Constitution and to an amending formula as long as the whole issue of the distribution of powers has not been settled and Québec has not been guaranteed all the powers it needs for its development.[208]

178. Québec is of the view that reform of the division of powers must precede that of central institutions, including the Senate.[209]

••• Distribution of powers

a) General principles

179. The federal government should eliminate certain activities in areas where the provinces have more or less similar programs that match their needs more closely. It should also abstain from carrying out tasks which the provincial governments can do more economically and effectively.[210]

180. To resolve economic problems, the federal government must comply with agreements already signed instead of modifying them unilaterally, and, to prevent economic problems from being lost in jurisdictional squabbles, it must respect the jurisdiction of provincial governments.[211]

181. The Canadian economy is not a large homogeneous whole that can be suc-

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[205] Directeur général des élections du Québec, *Rapport des résultats officiels du scrutin, Référendum du 20 mai 1980*, 1980, p. 19 (an extract of the Official Report and the text of the referendum question may be found in part 3: document no. 12).

[206] Resolution of the Québec National Assembly dated May 4, 1978 (quotation; see part 3: document no. 10).

[207] Gouvernement du Québec, press release, Federal-Provincial Conference of the First Ministers, Ottawa, October 30 and November 1, 1978.

[208] *Ibid.* See also *Dossier sur les discussions constitutionnelles 1978-1979*, presented to members of the Commission parlementaire de la Présidence du Conseil et de la Constitution by Claude Morin, Minister of Intergovernmental Affairs and Marc-André Bédard, Minister of Justice, January 12, 1979: note on the patriation and amendment of the Constitution, p. 30.

[209] *Dossier sur les discussions constitutionnelles 1978-1979*, note on the Senate, p. 27.

[210] Statement by René Lévesque, Federal-Provincial Conference of the First Ministers, Ottawa, February 13-15, 1978, Canadian Intergovernmental Conferences Secretariat (CICS), doc. 800-7/056, p. 7.

[211] *Ibid.*, p. 7, and declaration by René Lévesque at the end of the conference, First Ministers Conference on the Economy, Ottawa, November 29, 1978, CICS, doc. 800-9/086.

cessfully controlled and manipulated using standard policies and formulae. Provincial governments are in the best position to act, since they know their own economic context and its component factors, i.e. resources, industrial structure, domestic market, social climate, etc.[212]

Reform of the distribution of powers as Québec's priority: See paragraphs 177-178.

b) Sectorial jurisdictions

182. Québec proposes a territorial partition of the Gulf of St. Lawrence, by means of lines equidistant from the shores of the Gulf, according to an agreement reached in 1964 between Québec and the Atlantic provinces.[213]

183. Concerning ore and other resources located outside the immediate territory of the provinces in the 200-mile economic zone, Québec advocates concurrent jurisdiction with provincial legislation taking precedence. The exception would be the distribution of mining duties among provinces, where federal authority could take precedence until the provinces concerned reach an agreement on the matter.[214]

184. The provinces should have exclusive jurisdiction over fisheries within their territory. Outside the Gulf of St. Lawrence, in the 200-mile economic zone, Québec would be prepared for concurrent jurisdiction. With the exception of distribution of quotas where federal authority would take precedence, provincial legislation should have priority.[215]

185. The Québec government should have primary responsibility for strategies to modernize and convert certain industries in Québec, though it agrees with the need for cooperation with the federal government in this matter. Québec has frequently asserted that it considers itself in the best position to provide effective assistance to small and medium-sized businesses.[216]

186. Québec considers that it is primarily responsible for defining its industrial strategy, while acknowledging the need for cooperation with the federal government in the matter.[217]

187. The rules concerning the interventions of both governments in the area of scientific research must be redefined. The aim should be a fair distribution of resources, recognition of Québec's needs and priorities, respect for Québec's development policies, and concerted action and coordinated initiatives by those involved. The federal government must not intervene in the area of scientific research in Québec without the prior agreement of the Québec government, which has primary responsibility for science policy.[218]

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[212] Statement by René Lévesque, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc. 800-9/040, p. 6.

[213] *Dossier sur les discussions constitutionnelles 1978-1979*, note on off-shore resources, p. 19.

[214] *Ibid.*, p. 19.

[215] *Ibid.*, note on fisheries, p. 17.

[216] Québec document on industrial development, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc. 800-9/050, p. 11.

[217] Statement by Rodrigue Tremblay, Minister of Industry and Commerce, Federal-Provincial Conference of Ministers of Industry, Ottawa, January 30, 1978, CICS, doc. 830-45/006, p. 14.

[218] Ministre d'État au Développement culturel, *Pour une politique québécoise de la recherche scientifique*, Québec, Éditeur officiel du Québec, 1979, p. 72-73.

188. It is essential that any future cultural policy for Canada fully recognize the distinct cultural character of Québec, insofar as the development, promotion and protection of this character are concerned. How can this be achieved except through the Québec government's control over the sector that influences culture on a daily basis: communications?[219]

189. The necessity of Québec's intervention in the area of communications rests on the imperatives of civilization, cultural necessities, and its responsibility to develop and apply a coherent communications policy. [...] The Québec government, a daily participant together with the population in the life of Québec, is in the best position to appreciate the reality of Québec and reflect that reality in appropriate regulations.[220]

190. The Québec government would like to see a constitutional power-sharing formula used in communications. This formula proposes that when a provincial law requires provincial telecommunications companies to obtain an operating licence, any federal company operating or wishing to operate in Québec should hold a licence from the provincial regulatory agency.[221] Québec maintains that pay-TV falls within its jurisdiction.[222]

191. It is essential that the Québec government participate on at least an equal footing with the federal government and other provincial governments in developing policies on satellites and in decision-making.[223]

192. Since mineral resources and their management are under provincial jurisdiction (BNA Act, Sec. 109), it is up to the provinces to decide on the best ways to ensure the viability and growth of their mining industry.[224]

193. Québec considers it is in the best position to design and implement an appropriate economic development policy for its people.[225]

194. Québec maintains that the provinces have exclusive ownership of their natural resources.[226]

195. Québec demands provincial access to all forms of taxation, except customs duties.[227]

196. Provinces that wish to should be able to exercise exclusive jurisdiction over tourism and receive the unconditional transfer of federal funds currently allocated for this purpose.[228]

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[219] Opening statement by Denis Vaugeois, Minister of Communications, Federal-Provincial Conference of Ministers of Communications, Toronto, October 16-17, 1979 (quotation), CICS, doc. 800-11/027, p. 3.

[220] Government of Québec, document on federal legislation and delegation of powers, Federal-Provincial Conference of Ministers of Communications, Charlottetown, March 29-30, 1978 (quotation), CICS, doc. 830-39/018, p. 4.

[221] *Ibid.*, p. 6.

[222] Government of Québec, document on pay-TV, Federal-Provincial Conference of Ministers of Communications, Charlottetown, March 29-30, 1978, CICS, doc. 830-39/32, p. 2; see also the document of the Government of Québec, Federal-Provincial Conference of Ministers of Communications, Toronto, October 16-17, 1979, CICS, doc. 830-54/022, p. 2.

[223] Government of Québec, document on policies relating to satellites, Federal-Provincial Conference of Ministers of Communications, Toronto, October 16-17, 1979 (quotation), CICS, doc. 830-54/022, p. 2.

[224] Declaration of the government of Québec, Federal-Provincial Conference of Ministers of Mines, Toronto, January 19-20, 1978 (quotation), CICS, doc. 830-9/009, p. 1.

[225] Notes for a declaration by René Lévesque at the end of the First Ministers Conference on the Economy, Ottawa, November 27-29, 1978 (quotation), CICS, doc. 800-9/086, p. 2.

[226] Statement by Yves Bérubé, Minister of Energy and Resources, First Ministers Conference on Energy, Ottawa, November 12, 1979, CICS, doc. 800-11/027, p. 8.

[227] *Dossier sur les discussions constitutionnnelles 1978-1979*, note on indirect taxation, p. 11.

[228] Government of Québec, document on tourism, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc. 800-09/048, p. 2.

197. Québec demands complete and exclusive jurisdiction over recreation. The links between culture and recreation are too strong to allow another government body to intervene in Québec. The federal government's responsibility would be limited to funding.[229]

198. The Québec government claims primary responsibility for its cultural and natural heritage and demands that bilateral negotiations between Québec and Ottawa be opened immediately concerning the restitution of cultural properties, sites and historic places owned or managed by the federal government within Québec, as well as the integration of national historic parks and the Battlefields Park (Plains of Abraham) and federal parks into the Québec parks network.[230]

199. Québec demands that jurisdiction over all correctional services be ceded to the provinces, subject to the transfer of the corresponding financial resources. There seems to be little rational basis for the current division of responsibilities, the result being duplication in certain areas, including the administration and management of institutions, parole and community supervision.[231]

200. Social services areas come under the exclusive jurisdiction of the provinces.[232]

201. Health comes under the exclusive jurisdiction of the provinces.[233]

202. The provinces have exclusive responsibility for deciding whether or not to intervene in collective negotiations that come under their jurisdiction. Québec intends to maintain room to maneuver in labour relations, convinced that it and it alone must set its priorities in this area.[234]

c) Unilateral powers

203. The federal spending power should be limited solely to areas listed as within exclusive or concurrent federal jurisdiction. However, a decision is needed on the method of compensation for provinces that decide not to participate in federal programs.[235]

204. Québec demands the elimination of the federal declaratory power, given that provinces enjoy internal sovereignty over their areas of jurisdiction.[236]

••• Individual and language rights

205. If all provinces were to demand a charter, Québec would oppose the inclusion of rights other than those that have been seriously tested in the courts, so as to avoid the disadvantages of an entrenched charter as much as possible.[237]

206. Québec is opposed to the inclusion in the Constitution of language rights that

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[229] Declaration by Claude Charron, Minister responsible for the Haut-Commissariat à la Jeunesse, aux Loisirs et aux Sports, Interprovincial Conference of Ministers of Sports and Recreation, Winnipeg, May 31 and June 1, 1977, taken from *Québec-Canada*, ministère des Affaires intergouvernementales, vol. 5, no. 3, May-June 1977, p. 1.

[230] Press release from the office of Yves Duhaime, Minister of Tourism, Game and Fishing, Federal-Provincial Conference on Parks, Victoria, September 25 and 26, 1978.

[231] Press release, office of the Minister of Justice, Federal-Provincial Conference of Attorneys General and Ministers responsible for Correctional Services, Ottawa, June 27, 1977, CICS, doc. 830-32/023.

[232] Statement by Denis Lazure, Minister of Social Affairs, Federal-Provincial Conference of Ministers of Social Welfare, Ottawa, March 6-7, 1978, taken from *Québec-Canada*, ministère des Affaires intergouvernementales, vol. 7, no. 3, March 1978, p. 2.

[233] Statement by Denis Lazure, Minister of Social Affairs, Federal-Provincial Conference of Ministers of Health, Ottawa, June 22-23, 1977, taken from *Québec-Canada*, ministère des Affaires intergouvernementales, vol. 5, no. 4, July 1977, p. 2.

[234] Notes for the Québec delegation on the issue of labour relations in the post-controls period, Federal-Provincial Conference of First Ministers, Ottawa, February 13 to 15, 1978, CICS, doc. 800-7/062, p. 1 and 5.

[235] *Dossier sur les discussions constitutionnelles 1978-1979*, note on the federal spending power, p. 6.

[236] *Ibid.*, note on the declaratory power, p. 7.

[237] *Ibid.*, note on the charter of rights and freedoms, p. 23 (quotation).

would limit its freedom to maneuver in a sector so vital to its future as a society. Québec cannot accept that its autonomy in this area be replaced by a limited authority subject to interpretation by the courts.[238]

Education in the language of the minority: See paragraph 215.

••• Institutions

207. The goal of Senate reform must be real representation of the provinces at the central level, and their participation in the exercise of federal power. However, if the Upper House is truly to represent the provinces, its members must be appointed by provincial governments for a limited term. Furthermore, Québec believes it would be difficult to determine the composition and powers of a new Upper House in which the provinces would participate in the exercise of federal powers as long as these powers have not been redefined. In general, on the Senate issue, Québec reiterates the Johnson position of 1968. The Senate's composition and operation should reflect the Canadian duality.[239]

Federal institutions and Québec priorities: See paragraph 178.

208. Québec seeks the creation of a constitutional court the majority of whose judges would be directly appointed by the provinces. Furthermore, if a matter referred to a court raises a constitutional issue that is deemed serious, procedures should be suspended and the issue immediately referred to the constitutional court.[240]

209. Québec demands that the Québec Court of Appeal be the court of final appeal in matters relating to Québec civil law, and that each order of government be charged exclusively with appointing judges to courts under its own jurisdiction, which, consequently, would cover judges of the Superior Court and the Court of Appeal.[241]

210. Québec is opposed to any increase in the Governor General's authority.[242]

••• Intergovernmental policy

a) Financial aspects of federalism

211. Québec objects to the many federal cutbacks that are gradually forcing it into an increasingly difficult financial situation, in the hopes of leading it to recognize as its own federal priorities, federal programs, federal distributions to citizens.[243]

212. Québec demands a new distribution of taxation that reflects the provinces' relatively smaller fiscal leeway compared to the federal government and the special situation of Québec, which is different from that of other provinces owing to the implementation of its own programs and has resulted in a considerable increase in Quebecers' tax burden and public indebtedness.[244]

Taxation: See also paragraph 195.

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[238] Letter from René Lévesque to Prime Minister Pierre Elliott Trudeau, September 9, 1977.

[239] *Dossier sur les discussions constitutionnelles 1978-1979*, note on the Senate, p. 27.

[240] *Ibid.*, note on the Supreme Court, p. 25.

[241] *Ibid.*

[242] *Dossier sur les discussions constitutionnelles 1978-1979*, note on the monarchy, p. 28.

[243] Speaking notes for the Minister of Finance of Québec, First Ministers Conference on the Economy, Ottawa, November 27-29, 1978, CICS, doc. 800-9/036, p. 11.

[244] Budget Speech delivered by Jacques Parizeau, Minister of Finance, Minister of Revenue and Chairman of the Conseil du Trésor, Québec National Assembly, *Journal des débats*, April 12, 1977, p. 593-595.

213. Québec proposes that the federal government make annual unconditional equalization payments to the provinces so that each province can, according to its fiscal capacity, provide comparable public services at comparable rates of taxation, with a view to reducing social and economic disparities in Canada.[245]

b) Aboriginal Nations

214. Three principles apply to the issue of aboriginal peoples: 1) any attempt to determine their future for them must be rejected; these communities are first and foremost responsible for making decisions on their development, which assumes they will fully discuss their social and cultural status; 2) aboriginal peoples must not be left to fend for themselves using only their own resources; they must be able to rely on support from the Québec government; 3) aboriginal communities have a responsibility to develop institutions and strategies that suit their cultural development.[246]

c) French-Speaking and Acadian Communities of Canada

215. The government of Québec proposes to the governments of the other provinces that would so desire as it does, enhanced access to schooling in the language of the minority and the drawing up of reciprocal agreements to such end. Québec is prepared to negotiate agreements with other provinces that would provide citizens of other provinces who settle in Québec with access to English schools according to the terms and conditions that apply to anglophones in Québec.[247]

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[245] *Dossier sur les discussions constitutionnelles 1978-1979*, note on equalization payments and regional disparities, p. 9.

[246] *La politique québécoise du développement culturel*, volume 1, ministre d'État au Développement culturel, Québec, Éditeur officiel du Québec, 1978, p. 89 and 90.

[247] Declaration by the Prime Minister of Québec on reciprocal education agreements, Eighteenth Annual Provincial Premiers Conference, St. Andrews, New Brunswick, August 18-19, 1977, CICS, doc. 850-8/012, p. 4 and 6.

GOVERNMENT OF RENÉ LÉVESQUE

(POST-REFERENDUM PERIOD,
MAY 21, 1980 TO MAY 1985)

Daniel Lessard

Source: Archives nationales du Québec

••• Status of Québec

216. Canada is made up of two equal nations; Québec is the home and foundation of one of these nations and, having the attributes of a distinct national community, enjoys an inalienable right to self-determination. The right to self-determination is the most fundamental right of Québec society.[248]

217. The clear recognition of the right to self-determination is the most valuable accomplishment of the Québec referendum [...]. It is now undisputed and undisputable that Québec constitutes a distinct national community which can by itself, without outside interference, choose its constitutional status, [...]. The right—to control its own national destiny—is the most fundamental right enjoyed by the Québec people.[249]

218. The fundamental issue for Québec in its federal-provincial relations is the following: is it possible to renew Canadian federalism in such a way that Québec can, within this system, exercise the powers and control the levers necessary for it to fulfill its role as the home and homeland of one of the constituent nations of Canada?[250]

219. To be valid, any renewal of the federal system must include concrete recognition of Québec's national identity and of the future requirements inherent in that, whether in terms of culture, communications, economic development and social policy.[251]

Recognition of Québec:
See also paragraphs 221 and 224.

220. In discussions on the patriation of the Canadian Constitution, Québec presents the following proposal regarding the issue of a preamble and a statement of the purpose of the Constitution:

"According to the wishes of Canadians, the provinces, in concert with the federal government, want to remain freely united in a federation, as a sovereign and independent country, under the Crown of Canada, with a constitution that is similar, in terms of its principles, to the existing constitution;

THE FUNDAMENTAL GOAL of the federation is to preserve and promote freedom, justice and the well-being of all Canadians. That is, to:

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[248] Speaking notes for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, *Dossier sur les discussions constitutionnelles*, Commission parlementaire de la Présidence du Conseil et de la Constitution, Québec, August 14-15, 1980, index 1, p. 2 and 3 (See part 2 of this document).

[249] *Ibid.*, p. 1 (quotation) [Translation].

[250] Statement by René Lévesque, Québec National Assembly, *Journal des débats*, June 5, 1980, p. 5992.

[251] Opening statement by René Lévesque, Federal-Provincial Conference of the First Ministers on the Constitution, Ottawa, September 8-13, 1980, CICS, doc. 800-14/037, p. 5, 6 and 7.

PROTECT individual and collective rights, including those of aboriginal peoples;

ENSURE that laws and political institutions are based on the will and consent of the people;

PROMOTE the economic aspirations, security and development of the various cultural groups in Canada;

RECOGNIZE the distinct character of the people of Québec which, with its francophone majority, is one of the pillars of the Canadian duality;

CONTRIBUTE to the freedom and well-being of humanity."[252]

••• Constitutional reform process

221. Québec's expectations from the resumption of constitutional negotiations are:

a) that they acknowledge the existence of a distinct society in Québec that wants to be recognized as such, that is free to decide its future and intends to maintain the cultural, economic and language tools to affirm itself and develop according to its own aspirations and needs, and to acquire the tools it currently lacks;

b) that they result in a clarification of the distribution of powers and a significant reduction in areas of federal-provincial overlapping;

c) that the federal government acknowledge that the provinces are not regional administrative entities, but major, responsible partners.[253]

222. Provided the government of Canada withdraws its patriation proposal, Québec would agree to an amending formula in which:

a) in general, a constitutional amendment would require approval by the federal Parliament and seven provinces representing at least 50% of the population of Canada;

b) any province could withdraw, with reasonable compensation, from a constitutional amendment (passed according to the above formula, excepting those concerning Senate reform and the Supreme Court, among others) that reduces the legislative authority, property rights or other rights or privileges of the legislature or government of a province;

c) any constitutional change concerning the office of the Queen, the Governor General and the Lieutenant Governor, use of French or English, the composition of the Supreme Court and changes to the amending formula, among others, requires unanimous consent.[254]

223. The National Assembly of Québec, mindful of the right of the people of Québec to self-determination, and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec, declares that it cannot accept the plan to patriate the Constitution.[255]

224. Québec sets four conditions for its signing of the *Constitution Act, 1982*:

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[252] Opening statement by René Lévesque, Federal-Provincial Conference of the First Ministers on the Constitution, Ottawa, September 8-13, 1980, CICS, doc. 800-14/037, p. 5, 6 and 7.

[253] Preliminary declaration by Claude Morin, Minister of Intergovernmental Affairs, Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index B, p. 3.

[254] Constitutional agreement, Canadian proposal for the patriation of the Constitution, April 16, 1981; document signed by provinces, except Ontario and New Brunswick (Part 3: document no. 14). Québec's opposition to the federal project for unilateral patriation was also expressed in the resolutions of the Québec National Assembly on November 21, 1980 and October 2, 1981 (See part 3: documents no. 13 and 15).

[255] Resolution of the Québec National Assembly, December 1, 1981 (quotation; see part 3: document no. 18). See also the Constitutional agreement, November 5, 1981 on patriation finalized without Québec's participation (Part 3: document no. 16) and the declaration by René Lévesque, November 5, 1981 (See part 2 of this document). See also Order-in-Council no. 3214-81 of the government of Québec, November 25, 1981 (Part 3: document no. 17).

1) recognition of the principle of equality of the founding peoples and the distinct character of Québec as a society; 2) a *veto* or general opting-out right with full financial compensation; 3) non-application of section 23 to Québec; and 4) abrogation of the Charter's mobility rights.[256]

225. Québec agrees to participate in aboriginal peoples conferences at the express request of representatives of aboriginal nations in Québec. This participation cannot be interpreted as recognition of the Constitution Act, 1982.[257]

••• Constitutional amending procedure

See paragraphs 222-224.

••• Distribution of powers

a) General principles

226. Affirmation of the basic equality of the two founding peoples cannot occur within Canadian federalism unless Québec is granted a unique role and the ability to exercise a set of special powers.[258] These powers affect education (including adult education), communications (radio, television, cable distribution and pay-TV), social policy, immigration, economic development, natural resources and Québec's international affirmation.[259]

227. The Québec government has always maintained that it cannot accept a pan-Canadian approach to the development of economic policy. Regional differences in Canada and the disparities in development in each region are too marked to think that standardized measures can be effective everywhere to the same degree. The Québec government is surely in the best position, if it is given the means, to promote economic development.[260]

Economic powers: See also paragraph 249.

228. The government nearest the people is in the best position to appreciate the circumstances of the various groups making up the population and is best able to adapt its legislation, programs and services to the needs expressed by citizens. The current status of women is not foreign to this observation and provides an outstanding example of the need for the central government to respect provincial primacy and autonomy in order to protect women's rights and improve their situation. For this reason, Québec immediately rejects the idea of a national action plan.[261]

Clarification of the distribution of powers and constitutional reform: See paragraph 221.

b) Sectorial jurisdictions

229. Québec demands that provincial legislative primacy in the realm of communications and communications systems be written into the Constitution, including: 1) the reception and transmission

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[256] Resolution of the Québec National Assembly, December 1, 1981 (See part 3: document no. 18); see also the letter from René Lévesque to Margaret Thatcher, Prime Minister of Great Britain, December 19, 1981 and the letter from René Lévesque to Prime Minister Pierre Elliott Trudeau, December 17, 1982.

[257] Opening statement by René Lévesque, Conferences of First Ministers on Constitutional Issues of Interest to Native People, Ottawa, March 15-16, 1983, CICS, doc. 800-17/033, p. 1, March 8-9, 1984, CICS, doc. 800-18/021, p. 1 and April 2-3, 1985, CICS, doc. 800-20/014, p. 1.

[258] Speaking notes for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, *Dossier sur les discussions constitutionnelles*, index 1, p. 4 (See part 2 of this document).

[259] Statement by René Lévesque, Québec National Assembly, *Journal des débats*, June 5, 1980, p. 5995-5999.

[260] Government of Québec, document on economic development, Federal-Provincial Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/018, p. 4.

[261] Speaking notes for Pauline Marois, Minister responsible for the Status of Women, Federal-Provincial-Territorial Conference of Ministers responsible for the Status of Women, Ottawa, May 31 and June 1, 1983, CICS, doc. 830-129/019, p. 3-4.

within the province of signals from outside the province; 2) the transmission outside a province of signals originating inside the province; 3) the ownership and management of communications and communications systems; 4) the programming, including commercial advertising; 5) authority to issue operating Licences, as well as the specific assignment of frequencies and other technical operating standards. In addition, the federal Parliament would be authorized to legislate exclusively in areas such as 1) the general management of broadcast frequencies; 2) the use of communications and communications systems for aeronautics, defence or national emergencies 3) matters relating to the Canadian Broadcasting Corporation, whose development plans would, however, be subject to approval by the government of a province for activities within that province.[262]

230.Québec requests that the federal government respect provincial jurisdiction over closed-circuit television services and proposes that any business wishing to distribute a pay-TV service be required to satisfy conditions set by the province.[263]

Communications: See also paragraph 226.

231.Québec considers that in the Gulf of St. Lawrence its territory extends to the median lines dividing its shores. Concerning ore and other resources located outside the immediate territory of the provinces in the 200-mile economic zone, Québec advocates concurrent jurisdiction with provincial legislation taking precedence. The exception would be the distribution of mining duties among provinces, where federal authority could take precedence until the provinces concerned reach an agreement on the matter.[264]

232.Québec proposes to add fishing and fisheries within the province to the list of areas of which the provinces would have exclusive legislative power, and to eliminate this power from the list of areas subject to exclusive federal legislative authority. A provision must be added to the Constitution defining the rights of the provinces bordering on the Gulf of St. Lawrence and specifying that the limits of the provinces of Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland extend to the median lines equidistant from their respective Gulf shores.[265]

233.Québec claims full jurisdiction over job creation programs and demands the recovery of funds allocated for this purpose by the federal government. Québec bases this claim on the fact that francophone workers have little out-of-province mobility because of significant social and cultural factors.[266]

234.Québec wants full responsibility over policy and decision-making in the area of adult training and asks the federal government for the transfer of all federal funds allocated to adult vocational training in Québec.[267]

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[262] Notes of the Québec government on communications, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossiers sur les discussions constitutionnelles*, index 8, p. 1-3.

[263] Proposal by Québec concerning pay-TV, Federal-Provincial Conference of Ministers of Communications, Winnipeg, September 9-10, 1981, CICS, doc. 830-103/012; see also Québec's position on pay-TV, Federal-Provincial Conference of Ministers of Communications, Calgary, May 21, 1982, CICS, doc. 830-117/009.

[264] Note of the Québec government on off-shore resources, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 6, p. 1.

[265] Note of the Québec government on fisheries, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 7, p. 2-3.

[266] Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/044-1, p. 4.

Vocational training: See also paragraph 246.

235. Québec considers that unconditional transfers of funds for post-secondary education, tuition fees and student assistance are not negotiable because they relate to education and fall within the provinces' exclusive jurisdiction.[268]

Education: See also paragraphs 226, 238 and 246.

236. Québec makes the following constitutional proposals concerning family law:

a) marriage should be within exclusive provincial jurisdiction;

b) divorce would be an area of concurrent jurisdiction, though provincial legislation would have primacy over federal legislation. In addition, a province could exclude, by declaration of the legislature, the federal Parliament from the realm of divorce;

c) furthermore, the provinces would have exclusive jurisdiction over ancillary divorce measures (alimony, maintenance, etc.) while the federal Parliament would have exclusive jurisdiction over standard rules concerning national recognition of divorce judgments issued both in Canada and in other countries;

d) in addition, the provinces would have the authority to appoint judges to a unified family court.[269]

237. Québec proposes that each province have exclusive jurisdiction over natural resources (including regulation of interprovincial trade), with provincial legislation taking precedence over federal legislation in this area, so that the federal government could not invoke its general powers (residuary and implicit power, declaratory, reserve and disallowance powers, exceptional provisional power, etc.) to override a provincial law. In addition, the provinces' public ownership should not be subject to expropriation by Parliament, except with the consent of the provincial government concerned.[270]

Québec's international affirmation: See paragraph 226.

Status of women: See paragraph 228.

c) Unilateral powers

238. Québec denounces the encroachment on provincial jurisdiction caused by the imposition of federal national standards that, through the federal spending power, erode the distribution of powers between the two orders of government. It is unacceptable to Québec that the federal government implement an inspection and monitoring system in a sector of provincial jurisdiction such as health, that it pay grants to municipalities directly and make payment of its contributions subject to compliance with the criteria of "national" objectives, in particular in education. If provincial jurisdiction is

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[267] Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/044-1, p. 4. See also the statement by René Lévesque, Annual First Ministers Conference, Charlottetown, August 19-22, 1984, CICS, doc. 800-26/007, p. 3. Concerning vocational training, see also a note of the Québec government on adult vocational training in Québec, First Ministers Conference on the Economy, Regina, February 14-15, 1985, CICS, doc. 800-19/036, p. 35-36.

[268] Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/044-1, p. 4.

[269] Note of the Québec government on family law, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 11, p. 2.

[270] Note of the Québec government on natural resources, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 5, p. 3-4. The government reiterates the position taken at the First Ministers Conference of February 1979.

to be defended, the provinces must effectively exercise their powers, fully occupy their areas of jurisdiction and the federal spending power must be limited, with the latter a priority.[271]

Subsidies for municipalities: See also paragraph 247.

Unilateral powers and natural resources: See paragraph 237.

••• Individual and language rights

239. The vast area of rights and liberties is evolving rapidly. Constitutional entrenchment would inevitably complicate this process, make it infinitely more difficult and deny elected assemblies the power to act democratically in this area, transferring it to the courts for judgment.[272]

240. Québec is opposed to the inclusion in the Constitution of language rights that would limit its freedom to maneuver in a sector so vital to its future as a society. Québec cannot accept that its autonomy in this area be replaced by a limited authority subject to interpretation by the courts.[273]

241. Québec will include an override clause in each statute passed by the National Assembly before April 17, 1982. A similar clause will henceforth be added as a matter of course to each bill submitted to the National Assembly.[274]

School language rights and mobility rights: See paragraph 224.

••• Institutions

242. Québec proposes that the following points be included in the Constitution concerning the Supreme Court:

a) institutionalize the Supreme Court;

b) confirm the current composition of the Court, i.e. nine judges, three of whom are from Québec;

c) specify that the federal government, before appointing a judge to the Court, must obtain the approval of the Minister of Justice of Québec or of the province concerned;

d) specify that the Supreme Court is the last resort tribunal in Canada, both for civil and criminal matters;

e) indicate that when the Court must decide on an issue of civil law in Québec, a bench will be formed on which the majority of the judges will be from Québec;

f) add that the provinces can refer a request for an opinion to the Court;

g) entrench the rule of linguistic alternation of the Chief Justice of the Supreme Court;

h) create a constitutional bench on the Court, half of whose members to be drawn from Québec and the other half from the other provinces. This bench would be responsible for deciding constitutional disputes submitted by the provinces or the federal government.[275]

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[271] Statement by René Lévesque on the current situation and priorities for the future, Annual First Ministers Conference, Charlottetown, 1984.

[272] Speaking note for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, *Dossiers sur les discussions constitutionnelles*, index 1, p. 5 (See part 2 of this document). On this subject, see also paragraph 206.

[273] Note of the Québec government on the Charter of Rights, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 3, p. 5 (quotation).

[274] Statement by Marc-André Bédard, Minister of Justice, *Journal des débats*, May 5, 1982, p. 3291.

[275] Note of the Québec government on the Supreme Court, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 10, p. 2. In January 1979, the Lévesque Government asked for the creation of a constitutional court, the majority of whose judges would be appointed directly by the provinces, and demanded that jurisdiction over Québec civil law rest, in the final instance, with the Québec Court of Appeal. See *Dossier sur les discussions constitutionnelles 1978-1979*.

243. The provinces should have the constitutional authority to appoint judges to superior, district and county courts.[276]

244. According to Québec, a reformed Upper House should provide significant provincial representation and participation in the exercise of federal power. Québec also believes that the composition and operation of this House should reflect the dual nature of the Canadian nation.[277]

••• Intergovernmental policy

a) Conducting intergovernmental relations

245. As long as the people of Québec have not decided democratically to opt for a different regime, a government headed by the Parti québécois must act to protect and defend the interests of Québec within the federal system. The federal government will find Québec quite prepared to maintain harmonious relations with it.[278]

246. Québec is prepared, in spite of diverging constitutional interests, to agree to occasionally adopt joint actions with the provinces concerning specific issues (education, municipal institutions, vocational training, economic development, federal spending power).[279]

247. The Québec government has never agreed nor has it the intention of agreeing to the implementation of a system of direct relations between the federal government and the municipalities. Such a system would in fact erode the province's already too-limited jurisdiction.[280]

b) Financial aspects of federalism

248. The Québec government agrees that the principle of unconditional federal payments to the provincial governments should be written into the Constitution [...]. Such payments should be the preferred method of correcting regional disparities. Furthermore, Québec is prepared to have written into the Constitution the principle according to which all governments commit themselves to reduce regional disparities.[281]

Unconditional transfers: See also paragraph 235.

249. Québec and the provinces in general must have real economic powers.[282] Québec proposes that certain economic powers be decentralized. It also wants to increase the means at its disposal to stimulate growth within Québec and correct market imbalances, and does not agree economic under-development be mitigated by higher transfer payments.[283]

c) Aboriginal Nations

250. Québec formulates its reply to aboriginal demands:

a) it recognizes that the aboriginal peoples of Québec are distinct nations and have a right to their culture, their language, their customs and traditions as well as the right to decide how to develop this separate identity;

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[276] Note of the Québec government on the Supreme Court, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 10, p. 3.

[277] Note for an intervention by Québec on the Senate, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 9, p. 3.

[278] Inaugural message of René Lévesque, fifth session of the 32nd Legislature, *Journal des débats*, October 16, 1984, p. 22.

[279] Statement by René Lévesque on the current situation and priorities for the future, Annual First Ministers Conference, Charlottetown, August 19-22, 1984, CICS, doc. 850-26/007, p. 6.

[280] Speaking notes for Jacques Léonard, Minister of Municipal Affairs, Interprovincial Conference of Ministers of Municipal Affairs, Victoria, August 9-12, 1983, CICS, doc. 860-130/013, p. 2 (quotation); see also the letter from René Lévesque to Pierre Elliott Trudeau, May 26, 1983, CICS, doc. 860-130/014, p. 1.

[281] Note of the Québec government on equalization and regional disparities, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 12, p. 3.

[282] Notes of the Québec government on the powers affecting the economy, meeting of the Comité permanent des ministres sur la Constitution, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 4, p. 3.

[283] Comments by Québec on the federal positions relating to economic powers, Vancouver, July 22-24, 1980, *Dossier sur les discussions constitutionnelles*.

b) it also recognizes that aboriginal nations, within the structure of the laws of Québec, have the right to own and control the lands attributed to them;

c) these rights must be exercised within the context of Québec society, and consequently they cannot include sovereignty rights that could jeopardize the territorial integrity of Québec;

[...]

j) from Québec's point of view, protection of the existing aboriginal rights also extends to the rights included in agreements reached with Québec as part of the land claims process. In addition, the James Bay and Northern Québec Agreement and the North-eastern Québec Agreement must be viewed as treaties and have full effect;

k) Québec is ready to explicitly recognize in its legislation the existing rights stemming from the Royal Proclamation of 1763 concerning aboriginal nations.[284]

Participation in conference on Aboriginal Peoples: See paragraph 225.

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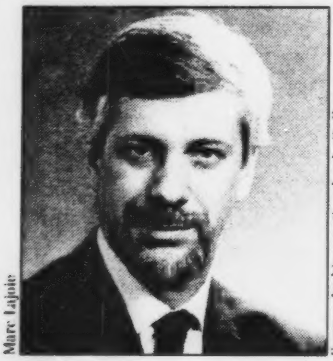
[284] Cabinet decision, February 9, 1983, included in *Les fondements de la politique du gouvernement du Québec en matière autochtone*, Secrétariat aux affaires autochtones, gouvernement du Québec, 1988, p. 3 and 4. See also the resolutions of the Québec National Assembly on March 20, 1985 and May 30, 1989 (Part 3: document no. 19).

GOVERNMENTS OF RENÉ LÉVESQUE AND PIERRE MARC JOHNSON

(MAY TO DECEMBER 2, 1985)[285]



Marc Lajoie

Source: Archives nationales du Québec

••• Status of Québec

251. The federal framework of the current Constitution should be improved to ensure that Quebecers obtain the most favourable conditions possible for their development.

252. The Québec people have the inalienable right to democratically determine their constitutional future as they see fit.

••• Constitutional reform process

253. Recognition of the existence of the Québec people as such is the essential prerequisite to Québec's agreement to and participation in a new constitutional process.

254. Québec is prepared to reach a constitutional agreement with the rest of Canada, designed to repair the injuries done to Québec in 1981, provided 1) Québec's primary jurisdiction in terms of rights and freedoms is acknowledged; 2) the amending formula is changed to provide Québec with sufficient guarantees; 3) that the distribution of powers is rearranged and judicial institutions are reformed.

••• Constitutional amending procedure

255. It should be recognized that Québec has a *veto* over both the reform of federal institutions and the creation of new provinces.

256. Regarding changes to the distribution of powers, Québec should have a *veto* or constitutional right to opt out with reasonable and mandatory financial compensation.

••• Distribution of powers

a) Sectorial jurisdictions

257. The distribution of constitutional powers should be revised so as to:

a) confirm Québec's full control over the manpower and all associated areas;[286]

b) recognize Québec's primary authority for the general direction of its economic development;

c) acknowledge Québec's primacy of jurisdiction in the area of immigrant selection and settlement in Québec;

d) grant Québec a significant increase in its powers in communications;

e) recognize Québec's exclusive jurisdiction over marriage and divorce;

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[285] Unless indicated otherwise, the following positions are taken from the document *Draft Agreement on the Constitution. Proposals by the Government of Québec*, May 1985 (Part 3: document no. 20).

[286] See also the note of the government of Québec concerning job creation and vocational training, First Ministers Conference, St. John's, Newfoundland, August 21 and 22, 1985, CICS, doc. 850-31/019, p. 68-69.

f) recognize, in terms of international relations, Québec's unique situation whenever its jurisdiction and identity are at issue, particularly as part of French-Speaking Communities.[287]

258. The National Battlefields Commission has jurisdiction over historic sites that are significant in the history of Québec such as the Plains of Abraham and the Parc des Braves that are located in the heart of the Québec capital. Québec requests that this commission's responsibilities be transferred to it.[288]

Culture and education: See paragraph 270.

Negotiations for liberalizing exchanges and distribution of powers: See paragraph 272.

b) Unilateral powers

259. The federal spending power should be constrained so that payment of conditional grants to the provinces is subject to the agreement of a majority of them. Any province refusing such grants should receive fair compensation.

260. The reserve and disallowance powers should be abolished.

••• Individual and language rights

261. The Canadian Constitution must recognize Québec's exclusive right to decide its official language and to legislate on any language issue within its jurisdiction.

262. Québec would guarantee the right of the anglophone minority to retain its cultural and educational institutions, and receive health care and social services in its language.[289]

263. Québec is prepared to amend the Charter of the French Language to guarantee that children of parents who received their elementary education in English in Canada will have access to English schools; in return, it expects that children eligible for French education everywhere in Canada will be able to effectively exercise the guarantee accorded by section 23.[290]

264. Only sections 3 to 5 of the Canadian Charter should continue to apply in Québec.

265. Québec's legislation should have the authority to subject its legislation solely to the Québec Charter of Rights and Freedoms, so that it could include the Charter in the Constitution of Québec.[291]

Primary responsibility of Québec in matters of rights and freedoms: See paragraph 254.

••• Institutions

266. The Constitution should explicitly recognize that three of the nine judges of the Supreme Court of Canada are to be appointed from Québec and that the position of Chief Justice is to be filled according to the principle of linguistic alternation.

267. Québec should have the constitutional right to participate in the appointment of Supreme Court of Canada judges from Québec. Its agreement should be obtained before their appointment by the federal government.

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[287] Position reiterated in *Le Québec dans le monde, Le défi de l'interdépendance, Énoncé de politique de relations internationales*, gouvernement du Québec, Ministère des Relations internationales, June 1985, p. 8. Regarding French-Speaking Communities, see the *Agreement between the government of Québec and the government of Canada pertaining to the Francophone Summit*, November 7, 1985 (Part 3: document no. 21).

[288] Letter from Pierre Marc Johnson, then Minister responsible for Canadian Intergovernmental Affairs, to Tom McMillan, federal Minister of Environment, Québec, November 5, 1985.

[289] See also speech by Pierre Marc Johnson, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, Ottawa, May 25, 1985.

[290] *Ibid.*

[291] See also speech by Pierre Marc Johnson, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, Montréal, May 29, 1985.

268. Only judges who are from Québec and trained in civil law should decide matters of civil law.

269. Québec should have the power to appoint, following consultation with the federal government, judges to Québec Superior Courts.

••• Intergovernmental policy

a) Conducting intergovernmental relations

270. Payments of federal grants to individuals and institutions working in the areas of culture and education should be subject to Québec's prior approval.

b) French-Speaking and Acadian Communities of Canada

271. To support the development of francophone minorities, Québec is prepared to negotiate mutual assistance agreements with the government of any other province.

French education: See paragraph 263.

c) Trade

272. The Québec government's support for holding negotiations on free trade comes with a certain number of conditions: 1) Québec wants to participate in the entire negotiation process (determination of objectives and mandates) and in the negotiation itself through the presence of representatives from Québec on the negotiation team; 2) transition, reassignment and job protection measures must be developed jointly by the federal government and the provinces to facilitate the adaptation of workers, businesses and regions to the changes resulting from a change in the trade system [...]; 3) in accordance with the Constitution of 1867, Québec will only consider itself bound, in areas within its jurisdiction, if it has given its consent.[292]

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[292] Statement by Pierre Marc Johnson, First Ministers Conference on the Economy, Halifax, November 28-29, 1985, CICS, doc. 800-21/031, p. 6 (quotation).

SECOND GOVERNMENT OF ROBERT BOURASSA

(PERIOD PRECEDING THE FAILURE OF THE MEECH LAKE ACCORD, DECEMBER 12, 1985 TO JUNE 21, 1990)

Daniel Lessard

Source: Archives nationales du Québec

••• Status of Québec

273. Québec's future lies within Canada. That is the profound conviction of the vast majority of Quebecers and the first and fundamental commitment of this government. The Québec government believes in federalism because, within the federal system, Québec can not only be faithful to its history and special identity but also enjoy favourable conditions for its full economic, social and cultural development.[293]

274. Recognition of Québec's specificity is a pre-requisite to any talks to persuade Québec to support the *Constitution Act of 1982*. Such recognition must guarantee Québec the means necessary to ensure its full development within the framework of Canadian federalism.[294]

275. Given its special situation within Canada and North America, Québec has sought, by means of the five conditions for its endorsement of the *Constitution Act, 1982*, to obtain assurance that the Canadian Constitution will enable it to attain its full potential within the Federation and receive the guarantees and powers necessary to protect and develop the characteristics that contribute to its specificity. Recognition of Québec's specificity was therefore a prerequisite to any negotiation intended to achieve Québec's endorsement of the *Constitution Act, 1982*. The efforts to find satisfactory constitutional answers to the other conditions laid down by Québec were based essentially on this special identity that sets Québec apart, particularly at the cultural, linguistic, social, economic, legal and political levels. Recognition of the distinct character of Québec society therefore became the generating principle of the other conditions, their common *raison d'être*.[295]

Distinct society and Meech Lake Accord:
See paragraph 279.

Québec's specificity and free trade:
See paragraph 296.

••• Constitutional reform process

276. Québec objects to the fact that the 1981 patriation was used as a pretext to substantially amend the Canadian constitution, despite Québec's objections and in disregard of its historic rights.[296]

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[293] Opening speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs at the Symposium "Rebuilding the Relationship: Québec and its Confederation Partners," Mont-Gabriel, May 9, 1986, p. 8 (See part 2 of this document).

[294] *Ibid.*, (quotation) p. 15.

[295] Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien," at a Symposium organized by the Canadian Bar Association on the 1987 Constitutional Accord, in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 190.

[296] Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 4 (See part 2 of this document).

277. No government of Québec of whatever political leaning could sign the *Constitution Act*, 1982 as it is currently worded. However, if certain changes were made, this constitutional law could be acceptable to Québec. These changes are: 1) explicit recognition of Québec as a distinct society; 2) guarantee of greater powers over immigration; 3) limitation of the federal spending power; 4) recognition of a *veto* power; and 5) Québec's participation in appointing judges to the Supreme Court of Canada.[297]

The distinct society as the primary generator of Québec's other conditions: See paragraph 275.

278. The 1987 Constitutional Accord (The Meech Lake Accord), a corrective agreement insofar as it enabled Québec to resume its place as a major and distinct partner in the federation, ends Québec's constitutional isolation. It completes the patriation process initiated in 1981-1982 and restores the very foundations of federalism by ensuring that the governmental partners give their full and willing accord to the basic constitutional document by which they are governed.[298]

279. In substance, the Constitutional Amendment, 1987, includes the following elements:[299]

1) It stipulates that any interpretation of the Constitution must be consistent with the recognition of these two points: that Québec forms a distinct society within Canada and that the legislature and government of Québec are mandated to protect and promote this distinct character; that linguistic duality is a basic characteristic of Canada, a characteristic for whose protection Parliament and the legislatures are responsible.

2) It stipulates a procedure, that can be written into the Constitution, for negotiating accords relating to immigration, which, subject to Parliament's power to set national standards and objectives concerning the setting of general immigrant categories, in particular, immigration levels and the choice of categories of ineligible persons, allow a province to exercise new powers in this area.

3) It gives every province the right to opt out with fair financial compensation of any new shared-cost program established in a sector of exclusive provincial jurisdiction, provided the province institutes a program or measure compatible with national objectives.

4) It places under the principle of provincial unanimity certain constitutional amendments that, under the *Constitution Act, 1982*, required only the application of the general amending formula. These amendments affect proportional representation of the provinces in the federal Parliament, the powers of the Senate and the selection of Senators, appointments to the Supreme Court, the creation of new provinces and the extension of existing provinces.

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[297] Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 4-5 and p. 12 (See part 2 of this document).

[298] Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien," in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 190.

[299] The Constitutional Amendment, 1987, and resolution of the Québec National Assembly, June 23, 1987 (Part 3: documents nos. 22 and 23). See also the speech delivered by Robert Bourassa (June 18, 1987) upon the tabling of the motion at the Québec National Assembly (See part 2 of this document).

In addition, the 1987 Constitutional Amendment guarantees the provinces the right to withdraw, with fair financial compensation, from any constitutional amendment that transfers provincial legislative powers to Parliament.

5) It stipulates, among other things, that three of the nine Supreme Court judges must be from Québec and that the Governor General in Council appoints only candidates proposed by the Québec government. Furthermore, the same procedure would apply to appointments to fill Senate vacancies.

280. The issues Québec would like to see resolved during the second round of constitutional discussions will obviously reflect our traditional demands and, in conjunction with the gains realized in 1987, will seek to widen the scope of Québec's role in the Canadian Federation.[300]

••• Constitutional amending procedure

281. The Constitutional amending procedure included in the *Constitution Act, 1982* is fundamentally unacceptable to Québec in that it fails to make provision for financial compensation in every case of opting out, and it allows changes to federal institutions and the creation of a new province despite Québec's objection.[301]

Constitutional amending procedure and Meech Lake Accord: See paragraph 279.

••• Distribution of powers

a) Sectorial jurisdictions

282. Québec's cultural security must be guaranteed. Specifically, Québec must control every aspect of its immigration to maintain its francophone character, by using its power to balance or even reverse the trends pointing to a decline in its relative demographic weight in Canada.[302]

Immigration and Meech Lake Accord: See paragraph 279.

283. We must always bear in mind that agriculture is an area of shared jurisdiction between the federal government and the provinces [...]. The role of the federal government is of particular importance in issues of interprovincial and international trade [...]. On the other hand, of course, the provinces can exercise their right to intervene in the areas of financing, marketing, research, production assistance, and income stabilization. We would not agree to any measure that would jeopardize these fundamental rights.[303]

284. The Québec government intends to vigorously defend its powers and jurisdiction in the financial sector, while being aware of the need to harmonize its legislation with that of the federal government and the other provinces.[304]

Distribution of powers and free trade: See paragraph 295.

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[300] Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien," in *L'adhesion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 206.

[301] Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 11-12 (See part 2 of this document).

[302] *Ibid.*, p. 10.

[303] Draft speech by Michel Pagé, Minister of Agriculture, Fisheries and Food, Federal-Provincial Conference of Ministers and Deputy Ministers of Agriculture, Victoria, August 26-27, 1986, CICS, doc. 830-224/024, p. 2 (quotation).

[304] Minister responsible for Finance and Privatization, *La réforme des institutions financières au Québec: objectifs, principes directeurs et plan d'action*, Québec, October 1987.

b) Unilateral powers

285. The fact that the federal government can and intends to spend money in every area, whether or not they lie within its jurisdiction, has become intolerable. It is a sword of Damocles hanging over each province's policies regarding its social, cultural and economic development. It appears increasingly necessary that this spending power be made subject to provincial approval. Such a change would contribute significantly to improving the way the federal system operates.[305]

Federal spending power and Meech Lake Accord: See paragraph 279.

••• Individual and language rights

286. Québec intends to control language policy within its borders. Québec views the maintenance of its language, culture and institutions as essential to its survival as a distinct society. Therefore, the Québec government must be chiefly responsible for language policy within Québec and, in this area above all, Québec will attempt to secure the broadest possible authority It will not be willing to sacrifice its jurisdiction over language to an ideal of Canadian unity that does not incorporate very strong guarantees concerning the preservation of its distinct character.[306]

287. In certain highly controversial issues where it is difficult to identify clear and generally recognized principles, it was prudent to leave the last word to Parliament. Because of the delicate balance that must be preserved in such matters, Québec favours maintaining the override clause included in section 33 of the *Canadian Charter of Rights and Freedoms.*[307]

••• Institutions

288. The status of the Supreme Court as final arbiter in constitutional debates, should be entrenched in the Constitution. Further, its composition must reflect the Canadian duality in terms of legal systems, and contribute to both preserving Québec's distinct character and recognizing its unique contribution to Confederation. The Court's composition is of great concern to Québec. Constitutional guarantees ensuring adequate representation on the Court and significant participation in the selection process applied to judges from Québec are essential.[308]

Supreme Court of Canada, Senate and Meech Lake Accord: See paragraph 279.

••• Intergovernmental policy

a) Conducting intergovernmental relations

289. Québec offers six proposals to help strengthen the Canadian federation: 1) on-going discussions to establish the conditions for Québec's endorsement of a new constitutional accord; 2) a substantial increase in regional economic development efforts; 3) the

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305. Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 10 (See part 2 of this document).

306. Speech by Claude Ryan, Minister of Education, Higher Education and Science and Minister responsible for the administration of the French Language Charter, Kingston, December 8, 1989, p. 1-2 (quotation; see also part 2 of this document).

307. *Ibid.*, p. 8 (quotation).

308. Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien," in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 201.

federal government's continued fulfilment of its constitutional commitment by means of equalization rather than by the implementation of new programs and the re-opening of fiscal arrangements as part of fiscal reform; 4) fair treatment of provinces receiving equalization by making appropriate corrections to the federal proposals in the near future; 5) provincial participation in tax reform, and ensuring the provincial presence in the consumer tax field does not decline; 6) and finally, inclusion in the priorities of each government of the means needed to enable women to achieve full economic equality.[309]

b) Financial aspects of federalism

290. The Québec government is of the view that the fiscal arrangements between the federal government and the provinces should be covered by a formal agreement between the two orders of government, which would endow them with a more permanent, stable and less arbitrary character than the current arrangements. It also demands that the federal government respect its financial commitments since, in the past, it made the decision to make transfer payments to the provinces rather than allow them sufficient tax room to assume their constitutional responsibilities in the areas of health and post-secondary education. Sufficient resources must be allocated to the provinces to enable them to uphold the principles of providing universal, accessible and free services. However, if the federal government is no longer capable of meeting its financial responsibilities in regard to health and post-secondary education, it should withdraw from these sectors and provide the provinces with compensation in the form of additional tax points.[310]

291. Québec protests against the federal government's unilateral changes to transfer mechanisms without prior negotiations with the provinces. The Québec government has no objection in principle to some degree of federal withdrawal, but it cannot agree that it should occur without negotiating with the provinces and fiscal compensation. In addition, it is paradoxical that the federal government should withdraw from various sectors while at the same time imposing national standards and applying financial penalties in cases where the provinces do not comply with these standards.[311]

Fiscal reform, financial arrangements and equalization payments: See also paragraph 289.

c) Aboriginal Nations

292. The Québec government's position concerning the aboriginal peoples is the following: 1) Québec favours constitutional recognition of the principle of aboriginal self-government within the framework of agreements negotiated with governments; 2) Québec is prepared to negotiate agreements and to make a commitment to that end; 3) Québec wants to be a party to all

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[309] Opening statement by Robert Bourassa, Annual First Ministers Conference, Vancouver, November 20-21, 1986, CICS, doc. 800-22/047, p. 8-9.

[310] Gérard D. Lévesque, Minister of Finance, 1986-1987 Budget Speech, *Schedule F*, p. 18, 19 and 21.

[311] *Ibid.*, p. 14.

negotiations on self-government concerning the aboriginal peoples living in Québec, and the resulting agreements must be approved by the National Assembly; 4) finally, Québec accepts that the agreements thus approved should receive constitutional protection.[312]

d) French-Speaking and Acadian Communities of Canada

293. Québec is resolved to support francophone minorities. However, its initiatives must take into account two principles inherent in the nature of the Canadian federal system:

a) it is up to each province, in the areas of jurisdiction assigned to it under the Constitution, to carry out its responsibilities toward its linguistic minority;

b) the federal government, instead of carrying out the duties assigned to the provinces by the Constitution, should concentrate on supporting provincial efforts to ensure effective recognition of the rights of the linguistic minority.[313]

294. The Québec government will work with francophones outside Québec as follows: Québec will contribute to strengthening francophone communities while respecting their priorities, their needs and their autonomy, in concert with its federal and provincial partners.[314]

e) Trade

295. Québec set conditions on its support for negotiations leading to the Free Trade Agreement between Canada and the United States: 1) It demanded that the existing distribution of legislative and constitutional powers be maintained. Among other things, the normal constitutional rules for the implementation of international treaties had to apply. 2) It also demanded that all the laws, programs and policies which, in the social area as well as communications, language and culture, contribute to Québec's specificity, be maintained. 3) It also wanted to preserve the room to maneuver it needs to develop and modernize its economy, with particular emphasis on small and medium-sized business. 4) It asked for assistance programs for workers and businesses in vulnerable sectors during the transition period. 5) It requested that the federal government and the provinces continue to cooperate in the management and implementation of the Accord as a whole. As such, it wants a standing federal-provincial consultation committee to be formed. Québec indicated, in fact, that it was prepared to change certain of its laws to implement the Accord in the areas within its jurisdiction.[315]

296. While in general, Québec supports the objectives of multilateral trade negotiations, its participation in developing

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[312] Opening speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, First Ministers Conference on Constitutional Issues of Interest to Native People, Ottawa, March 26-27, 1987, CICS, doc. 800-23/017, p. 4-5 (quotation).

[313] Speech by Claude Ryan, Minister of Education, Higher Education and Science and Minister responsible for the administration of the French Language Charter, Kingston, December 8, 1989, p. 11-12 (See part 2 of this document).

[314] Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, at the opening of the office of the Fédération des francophones hors-Québec, March 1988 (quotation).

[315] *Canada United States Free Trade Agreement: analysis from a Québec perspective*, ministère du Commerce extérieur et du Développement technologique, Québec, 2nd quarter, 1988, p. 39-42.

Canadian negotiating positions reflects its concern to defend the laws, programs and policies that, particularly in the social, cultural and communications areas, contribute to the specificity of Québec society. The government is also anxious to preserve the maneuvering room that will enable it to strengthen Québec's economic fabric and technological base.[316]

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[316] *Les négotiations commerciales multilatérales de l'Uruguay Round, perspective québécoise*, ministère des Affaires internationales, Québec, March 1990, p. 7.

SECOND GOVERNMENT OF ROBERT BOURASSA

(PERIOD FOLLOWING THE FAILURE OF THE MEECH LAKE ACCORD, JUNE 22, 1990 TO JANUARY 11, 1994)

Daniel Lessard

Source: Archives nationales du Québec

••• Status of Québec

297. English Canada must clearly understand that, regardless of what is said or done, Québec is today and always will be a society that is distinct, free and able to assume its destiny and development.[317]

298. On September 4, 1990, the National Assembly adopted An Act to establish the Commission on the Political and Constitutional Future of Québec (Bélanger-Campeau Commission). The preamble of this law states that Quebecers are free to assume their own destiny, to determine their political status and to assure their economic, social and cultural development. The preamble goes on to mention the need for redefining the political and constitutional status of Québec.[318]

299. The report produced by the Bélanger-Campeau Commission confirms that in the discussions and decisions that will be made regarding the political and constitutional future of Québec, two avenues must be considered in parallel: an in-depth reorganization of the current federal system or sovereignty for Québec. The other solutions would not answer the needs and aspirations of Québec society.[319]

300. The main idea behind the report and the recommendations of the Commission is that Quebecers themselves must make the decisions which will affect their political and constitutional future. With this, the Québec government concurs. In good time, the people of Québec will be called upon to make major decisions for its future. On the one hand, the Québec government retains its initiative and its ability to assess the measures which will be in the best interest of Québec. On the other hand, the National Assembly remains sovereign to decide on any referendum question and, if necessary, to adopt the appropriate legislative measures.[320]

301. On June 20, 1991, the Québec National Assembly adopted An Act respecting the process for determining the political and constitutional future of Québec ("Bill 150"). The preamble of this law reiterates that Quebecers are free to assume their own destiny, to determine their political status and to assure their

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[317] Speech by Robert Bourassa upon the rejection of the Meech Lake Accord, Québec National Assembly, *Journal des débats*, June 22, 1990, p. 4134 (quotation [Translation]; see part 2 of this document).

[318] Q.S. 1990, c. 34 (Part 3: document no. 24).

[319] Statement by the Prime Minister of Québec, Robert Bourassa, and Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, 1er addendum of the *Report of the Commission on the Political and Constitutional Future of Québec*, March 1991, p. 86.

[320] *Ibid.*, p. 87 (quotation).

economic, social and cultural development. The preamble also reaffirms the need for redefining the political and constitutional status of Québec.[321]

302. That the National Assembly, while recognizing the right of the federal Parliament to pass a referendum act, ask the federal government to abide by the process established in Bill 150 and, accordingly, not to initiate a pan-Canadian referendum that would affect the political and constitutional future of Québec, thus reaffirming the right of Quebecers to assume their own destiny freely and to determine alone their political and constitutional status.[322]

303. The government's preferred option remains a radically renewed federalism. A federalism in which Québec can give full expression to what it is and share what it has in common with the rest of Canada.[323]

304. The September 1991 federal proposals recognize the distinct society in the Constitution in two places. First in the Charter for its interpretation and second in a Canada clause that is also inserted in the Constitution. Nonetheless, the Canada clause must not be a disguised preamble as that could be the case in the federal proposals as they are worded. The distinct society concept must not be an artifice, but the recognition of an historic reality, since at least 1774, in the Québec Act. We do not want to be considered superior to the other provinces, we are not seeking any special privileges, we only want this clause to allow the courts to interpret the Canadian Constitution based on our reality, our history.[324]

Distinct society: See also paragraphs 310 and 313 (Charlottetown Accord).

305. From the analysis of the two options made by the parliamentary commissions set up under Bill 150, it demonstrates that sovereignty is legitimate and feasible. On a short-term basis, it points to costs both for Québec and the rest of Canada. It also indicates from testimonies that an economic association integrated into a political structure could lead to an efficient and harmonious collaboration for the better well being of both communities.[325]

••• Constitutional reform process

306. If anything can be concluded from the most recent constitutional negotiations, it is that the existing process of constitutional revision in Canada is discredited. The Québec government will not return to the negotiating table on constitutional issues.[326]

307. On September 4, 1990, the National Assembly adopted An Act to establish the Commission on the Political and Constitutional Future of Québec. This is an extraordinary commission bringing together representatives from the Québec National Assembly, society in general and Québec representatives from the House of Commons. Its mandate is to study and analyze the political and constitutional status of Québec and to formulate recommendations to this end.[327]

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321. Q.S. 1991, c. 34, amend. by Q.S. 1992, c. 47 (Part 3: documents nos. 25 and 28).

322. Resolution of the Québec National Assembly dated November 27, 1991 (quotation; part 3: document no. 26).

323. Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, before a banquet of the Chambre de Commerce d'Anjou, Montréal, January 15, 1992, p. 8 (quotation).

324. *Ibid.*, p. 9-10.

325. Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, at the Canadian Bar Association Meeting in Whistler, February 24, 1992, p. 8 (See part 2 of this document).

326. Message to the people of Québec by Prime Minister Robert Bourassa, June 23, 1990 (See part 2 of this document).

327. Q.S. 1990, c. 34 (See part 3: document no. 24).

308. Québec can no longer accept being one amongst eleven in the constitutional forum. We say no to a constituent assembly or any other form of negotiation that will put Québec face to face as one amongst eleven.[328]

309. Following the Bélanger-Campeau Commission's report, on June 20, 1991 the National Assembly adopted An Act respecting the process for determining the political and constitutional future of Québec, which provided for the holding in June or October 1992 of a referendum on the sovereignty of Québec and implemented two committees, one to examine matters relating to the accession of Québec to sovereignty and the other, to examine any offer of a new constitutional partnership.[329]

310. The principles Québec refers to in the current constitutional debate are:

1) The substance of the five conditions included in the Meech Lake Accord cannot be altered.
2) The powers of the National Assembly cannot be reduced without its consent. Québec must be able to say "No" to any constitutional amendment affecting the powers of the National Assembly as well as the institutions and main features of the Canadian federation. No Québec government can agree to a constitutional accord that does not include a *veto*.
3) Constitutional recognition of Québec as a distinct society is indispensable. The concept cannot be an empty shell. It must have significant political and legal consequences.
4) Québec shares the objective of a stronger and more dynamic economic union. We must look for ways that draw on intergovernmental harmonization and joint consultation to develop the Canadian economic union. The means proposed in September 1991 by the federal government are disproportionate compared to the objectives.
5) A new distribution of powers is needed to clearly confirm Québec's areas of jurisdiction. This distribution must lead to a more effective, more cooperative federalism that will reduce overlapping and provide Québec with the means it needs to protect and promote its identity.
6) The federation must be renewed constitutionally. In some areas of joint jurisdiction, simple administrative arrangements maybe useful, but they are not sufficient for the overhaul of the distribution of powers we need. It is a known fact that administrative agreements remain at the mercy of federal legislation. They are insufficient. No level of government benefits from a systematic recourse to administrative agreements.
7) The territorial integrity of Québec must be respected. The government cannot accept having entrusted to the courts the role of specifying the nature and conditions for applying the rights of Aboriginal peoples to self-government; Québec is prepared to recognize Aboriginal Peoples' right to self-government,

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[328] Speech by Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, Deliberations concerning Bill 150, Québec National Assembly, *Journal des débats*, June 12, 1991, p. 9115 (quotation) [Translation].

[329] Q.S. 1991, c. 4, as assented to on June 20, 1991 (Part 3: document no. 25).

but within the framework of duly negotiated agreements between the Aboriginal Peoples and the government of Québec.[330]

311. The deadline set forth by Bill 150 should not be considered a sword of Damocles hanging over the head of Canadians. Quebecers have given themselves this instrument to finally put a stop to constitutional uncertainties and to build their future with serenity. Bill 150 is no bluff.[331]

312. The Charlottetown Accord is concluded on August 28, 1992.[332] On September 8, 1992, the Québec National Assembly adopted An Act to amend the Act respecting the process for determining the political and constitutional future of Québec, which replaces the referendum on Québec sovereignty by a referendum on this agreement.[333]

313. The Charlottetown Accord constitutes the most complete and substantial basis for constitutional reform that has ever been presented by a government of Québec following negotiations with the federal government and the other provinces. It reflects two major concerns that have always been significant for Québec: its security as a society, a people and its means for development as the distinct society that it is.

1) The Accord has a Canada Clause divided into three parts.

In the first part, the clause refers to the fundamental values that Canadians and Quebecers share in common: liberty, democracy, fundamental rights, equality of women and men, attachment to the fact that there are Aboriginal Peoples, attachment to the fact that there are English and French-Speaking Canadians, and to the fact that Québec is a distinct society within Canada.

The second part of this Canada Clause states that: "The role of the legislature and Government of Québec to preserve and promote the distinct society of Québec is affirmed." Nowhere else in the Canada Clause is the role of a government mentioned. This essentially dynamic role of Québec institutions to preserve and promote the distinct society were not gratuitously put in this second paragraph of the clause.

In its third part, the Canada Clause contains what is known as a protection clause, i.e. a ground level that ensures that vested rights cannot be touched, but that it remains possible to build on this solid ground level since it guarantees the "notwithstanding" clause.

2) The Accord guarantees Québec the selection of its immigrants, its proportion of immigration as well as its capacity for integration into Québec society, a constitutionalized guarantee that cannot be changed without the consent of Québec.

3) It grants Québec a guarantee of three of the nine justices of the Supreme Court of Canada and protects the jurisdiction of the latter.

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[330] Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, before a banquet of the Chambre de Commerce d'Anjou, Montréal, January 15, 1992, p.9-11; Speaking notes for Gil Rémillard at the Canadian Bar Association Meeting in Whistler, February 24, 1992, p.2-7 (See part 2 of this document).

[331] Speaking notes for the Whistler Meeting, *ibid.*, p.8 (quotation).

[332] *Consensus Report on the Constitution*, Charlottetown, August 28, 1992 (Part 3: document no. 27).

[333] Q.S. 1992, c. 47 (Part 3: document no. 28).

4) As regards federal spending power, it recognizes Québec's right to opt-out with compensation from shared-cost programs. As for exercising the spending power in provincial areas other than through shared-cost programs, a framework will be implemented by the first ministers. The principles of this framework will be constitutionalized. It should specify that the exercising of the spending power must respect provincial priorities.

5) Under the Accord, Québec recovers a right of *veto* over the Senate and the House of Commons where, in addition, it is guaranteed 25% of the seats. Québec has a right of *veto* over the entry of new provinces and, consequently, recovers an absolute right of *veto* over the amending formula. There is also a right of veto over the distinct society and a right of *veto* over the "notwithstanding" clause.

6) The Accord provides for a Senate that will be equitably equal in that each province will have six senators, the Yukon territory will have one and the Northwest Territories, also one. The senators may be appointed or elected either directly or indirectly, i.e. it will be up to the provinces to decide, and this will be in the Constitution. The Québec National Assembly will therefore be able to elect its senators. The new Senate could have been called the federation chamber. The transformation of its powers will make it more representative of the provinces' interests. The new Senate will allow Québec in some ways to extend its political action to level of this new institution of the federal Parliament.

7) The Accord acknowledges in constitutional terms the right of Aboriginal Peoples to self-government. Québec's territorial integrity is ensured. Limits are set so that autonomous aboriginal governments may exercise their authority based on the respect of essential provincial and federal laws for respecting peace, order and good government. Resorting to the courts will be possible in cases of difficult negotiations.

8) Under the Accord, six sectors fall into exclusive provincial jurisdiction: forestry, mining, tourism, housing, recreation, municipal and urban affairs. Forestry and mining were already under provincial jurisdiction. As for the other four sectors, it was said that they are attached to provincial jurisdiction over property and civil rights. Yet, since these sectors were not expressly mentioned, the federal government also claimed its own jurisdiction over them. The Agreement ends this dispute. It also provides agreements for withdrawals with entitlements to financial compensations, agreements that could be reviewed and adjusted every five years.

The Accord recognizes two other extremely important exclusive areas. First in cultural affairs, while recognizing federal jurisdiction in matters of national institutions and a federal role to be played nationally for a Canadian culture. There should also be a federal-provincial agreement to ensure Québec's prevalence over culture within its territorial boundaries. The other recognized exclusive power is labour training. The Québec government did not request jurisdiction over unemployment insurance owing to the costs of a billion dollars that this transfer would have caused. Nonetheless, what Québec does obtain, especially, is the possibility of administering the unemployment insurance fund.

The Agreement also touches upon another extremely important jurisdiction: regional economic development. The current Québec-Canada agreement in this area could be enshrined in the Constitution and improved, in connection with the framework to be set up for the spending power and respect for provincial priorities. Lastly, in the field of telecommunications, Québec could through an agreement with the federal government, appoint commissioners to the Canadian Radio-Television and Telecommunications Commission.[334]

314. On October 26, 1992, in the referendum held in Québec on the Charlottetown Accord, the No option carried the day with 56.68% of electoral votes and the Yes option obtained 43.32%.[335]

••• Constitutional amending procedure

315. The Constitution Act, 1982 indeed provides for a right to opt out, but it carries with it financial compensation only with respect to transfers related to culture and education. The possibilities of such financial compensation should be broadened so as to include all cases of opting out, as provided in the Meech Lake Accord. As for the matters dealt with in section 42 of the Constitution Act, 1982 (central institutions, the Senate and the creation of provinces), Québec, as one of the major partners in the federation, is entitled to demand that it have a say in any amendment concerning those matters, since they are at the very heart of the federal compromise of 1867.[336]

Veto: See also paragraphs 310 and 313 (Charlottetown Accord).

••• Distribution of powers

a) General principles

316. The search for greater effectiveness must also guide us in establishing a new division of powers that will clearly delineate the jurisdictions of the two levels of government. We should find in the new constitution a division of power establishing a more functional, more cooperative federalism that will reduce overlaps and guarantee that Québec and the other provinces have the means necessary to protect and promote their distinctive characteristics.[337]

317. It is the essence of federalism to meet the different needs of the federal partners. [...] Asymmetry and federalism are compatible. Without overestimating its implications, we may view asymmetry as an important means of establishing a division of powers likely

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334. Speech by Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, on the Charlottetown Accord, Québec National Assembly, *Journal des débats*, September 3, 1992, p. 3087-3094.

335. See Directeur général des élections du Québec, *Rapport des résultats officiels du scrutin. Référendum du 26 octobre 1992*, 1992, p. 49 (see extract of the Official Report and the text on the referendum question in part 3: document no. 29). The Charlottetown Accord was also rejected by the rest of Canada by a separate referendum held under federal legislation on October 26, 1992. In the rest of Canada, the No option carried the day with a 54.3% result of votes validly cast, the Yes option obtained a result of 45.7%. See Chief Electoral Officer of Canada, *The 1992 Federal Referendum: A Challenge Met*, 1994, p. 58.

336. Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, at the Canadian Bar Association Meeting in Whistler, February 24, 1992, p. 4 (See part 2 of this document).

337. *Ibid*, p. 5 (quotation).

to satisfy both Québec and the other provinces, while consolidating the foundations of the federal government in regard to its national responsibilities.[338]

318. The distribution of legislative powers [...] must refer to two fundamental principles [...]: that we may have the legislative tools for expressing who we are as a society, as a people, in social and cultural matters as in the economy, and that we may also have an efficient federation to avoid duplications.[339]

The need for a constitutional, rather than an administrative reform: See paragraph 310.

b) Sectorial jurisdictions

319. In the current constitutional framework, the government of Québec does not have all the needed powers for attaining by itself the objectives of its political position in matters of immigration and integration. This is why Québec seeks to enlarge its jurisdictions in order to increase not only its ability to act, but also the efficiency of its actions.[340]

320. [...] Since 1986, the Québec Government has been seeking constitutional recognition of Québec's exclusive powers on establishing the criteria, selecting independent immigrants and extending its powers to on-site selection. Similarly, Québec is seeking the guarantee of receiving a number of immigrants proportional to its share of the Canadian population, with the right to exceed this number by 5% to maintain its weight within the Canadian Confederation. The Québec government holds that these minimal demands remain essential for an immigration policy the aim of which is to develop Québec as a distinct society.[341]

321. To align all action in integration of newcomers with Québec's objectives, Québec has since 1986 been demanding exclusive control over immigrant reception services and their cultural, linguistic and economic integration, along with reasonable financial compensation.[342]

Immigration: See also paragraphs 310 and 313 (Charlottetown Accord).

322. In the current constitutional context, as Minister of Cultural Affairs, I want to restate Québec's need to have prevalence in cultural matters within its territorial boundaries. The issue of culture is of fundamental importance for Québec. In this respect, it is essential that be recognized to its government the exclusive powers it needs to assume its responsibilities.[343]

Culture and Charlottetown Accord: See paragraph 313.

323. Faced with federal initiatives in the field of education undertaken in the name of the Canadian economy's competitive edge, Québec's positions are as follows:

- Québec is fully prepared to discuss businesses' competitive edge and the means for reviving the economy within the framework of a strategy for economic prosperity, but any impact on the educational objectives must remain within the exclusive power of Québec, especially as regards post-secondary education and vocational training.

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[338] Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, at the Canadian Bar Association Meeting in Whistler, February 24, 1992, p. 5-6 (quotation) (See part 2 of this document).

[339] Declaration by Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs in the debate on the status of constitutional negotiations, Québec National Assembly, *Journal des débats*, Commission permanente des institutions, May 29, 1992, p. CI-530 (quotation) [Translation].

[340] Message by Robert Bourassa, in ministère des Communautés culturelles et de l'Immigration, *Let's Build Québec Together: A policy statement on immigration and integration*, 1990, p. III.

[341] Ministère des Communautés culturelles et de l'Immigration, *Let's Build Québec Together: A policy statement on immigration and integration*, 1990, p. 24 (quotation).

[342] *Ibid.*, p. 49 (quotation).

[343] Message by Liza Frulla-Hébert, ministère des Affaires culturelles, *Québec's Cultural Policy: Our culture, Our future*, 1992, p. vii-viii (quotation) [Translation].

- In education, it is up to Québec to decide on the management, distribution and utilization of resources allocated to this sector.
- As regards common objectives (or national ones) in education, it is up to the provinces—within their exclusive powers—to define them, as it is up to them to decide on the opportunity to answer the needs identified by the federal government in the exercising of its own jurisdictions and whose solution falls within the field of education.[344]

324. Québec's constitutional basis in education reflects a lively socio-cultural reality and evokes the bonds of close symbiosis between universities, the community and their government. Québec cannot denounce this "strategic alliance" and invite the federal government to step in and orient the development of a university system that is so closely associated with the development of Québec society. This does not mean that Québec refuses to associate itself with major knowledge and research networks or wants to dissuade its researchers from competing with the best in continental or global contests. It just means that when the issue is one of basic catalytic actions, Québec cannot see someone being authorized to come in from the outside and decide what its priorities are to be. This should not be construed that Québec refuses fiscal or even financial transfers—it actively seeks them; it's more a question that it sees such amounts being deposited into the province's general fund, with even less strings attached that would be tantamount to having its priorities set.[345]

325. As other modern societies, Québec must define its own labour orientation policy on labour force adjustments. Despite the meritorious efforts for coordinating federal government actions with those of the Québec government in labour force issues, the complexity of the programs and the confusion they generate have continuously increased over the years. There is in Québec a consensus on the urgent need to put an end to this disorder by appointing just one administration, the government of Québec, to assume the responsibilities and budgets pertaining to the labour force adjustments. In this context, the government of Québec defends the following position:

- That Québec alone become the sole responsible party for labour force adjustments policies and vocational training within its territorial boundaries, and the only administration entrusted with developing and administering in cooperation with its social partners training, adjustments and job-assistance programs.
- That for this purpose, Québec patriate all federal budgets, including those funded from unemployment insurance and assigned to labour force programs.

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[344] *Le Québec et les universités, partenaires dans une société distincte*, notes for a speech by Lucienne Robillard, Minister of Higher Education and Science, at the closing banquet of the General Meeting of the Association of Universities and Colleges of Canada, (AUCC), Vancouver, March 4, 1992, p. 5.

[345] *Ibid*, p. 6.

- That the government of Québec be responsible within its territorial limits for the administration of unemployment insurance programs while maintaining the responsibility of the federal government regarding the regime's law and regulations.[346]

326. The control over all the instruments used for labour force adjustments and vocational training policies can be done within the current constitutional framework.[347]

The Charlottetown Accord and labour force issues: See paragraph 313.

327. The Québec government's guidelines in the field of economic and regional development, plus its relationship with the federal government are in this respect:

- The primacy of Québec's responsibility for the planning and setting of economic development and regional priorities within its territorial limits;
- The need for using procedures, structures and programs set up or approved by Québec;
- Québec predominance over all programs and projects falling under its jurisdiction.[348]

Economic development and the Charlottetown Accord: See paragraph 313.

328. Québec has never suggested that it would renounce or delegate any part of its responsibilities in the field of stock exchange securities.[349]

329. In making a distinction between international affairs and foreign policy, and in choosing an approach centred on Québec's interests, the foundations and impetus of the resulting policy are not likely to be brought into question. Indeed, in a modern context no government can meet its domestic responsibilities effectively without taking the international dimension into account, and it must act within this framework, according to its means.[350]

330. Under the Canadian Constitution, social and health care issues indisputably fall within the exclusive power of the provinces. Over the past twenty-five years, the government of Québec has remarkably exercised its responsibilities and it has endowed the health care and social affairs sectors with high-quality administrations. These success stories eloquently prove—and the citizens of Québec have every reason to agree—that Québec would have nothing to gain by a new distribution of powers in these sectors. Until today, they have been under exclusive provincial jurisdiction and, for the best interests of Quebecers, they are there to stay.[351]

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[346] Ministerial declaration by André Bourbeau, Minister of Labour, Income security and Vocational training, Québec National Assembly, *Journal des débats*, December 13, 1990, p. 6316-6317; ministère de la Main-d'œuvre, de la Sécurité du revenu et de la Formation professionnelle, *Partners for a Skilled and Competitive Québec: Policy statement on labour force development*, 1991, p. 45-46; document dealing with Québec's position in the labour sector, Federal-Provincial-Territorial Conference of Ministers responsible for Labour Market Matters, Toronto, January 19 and 20, 1993, p. 3-4.

[347] Ministerial declaration by André Bourbeau, *ibid.*, p. 6317 (quotation) [Translation].

[348] Preliminary comments by Gil Rémillard during a credit analysis session 1992-1993 of the Minister responsible for Canadian Intergovernmental Affairs, Québec National Assembly, *Journal des débats*, Commission des institutions, April 30, 1992, p. CI-288.

[349] Letter from Louise Robic, Minister responsible for Finance, to Gilles Loiselle, Minister of State for Finance and Chairman of the Treasury Board of the government of Canada, January 13, 1993 (quotation) [Translation].

[350] Foreword by John Ciaccia, ministère des Affaires internationales, *Québec and Interdependence: Global Horizons. Elements of an international affairs policy*, 1991, p. viii (quotation).

[351] Ministère de la Santé et des Services sociaux, *Québec's Health and Social Services: Equitable Funding, Living within our Means*, 1991, p. 84.

Financing Health Care and Social Services: See paragraph 336.

331. By a unanimous resolution, the Québec National Assembly has strongly disapproved Bill C-13 respecting the federal environmental assessment process. The federal bill seeks to excessively extend cases of federal assessment, especially by integrating the exercising of the spending power. It is foreseeable that the duplicate assessment of projects in environmental issues will become the rule rather than the exception. The duplication of assessments could have a negative impact on economic development and public participation. It also creates the risk of legal uncertainty, which could lead to numerous litigations. All the provisions for cooperation or harmonization set forth in the bill contribute to subordinating Québec procedures to the federal process. The joint examination process is one that actually puts the provincial government under the supervisory authority of the federal government. The bill multiplies cases where federal domination and provincial subordination may occur. It must be accepted in principle that throughout Canada, there may be different or distinct assessment procedures, but all having the same value. It is on the basis of this principle that true cooperation will be instilled in the future.[352]

332. The [Canadian] Green Plan set alongside Bill C-13, appears in many ways as a deliberate strategy for dispossessing the provinces of their responsibilities in the field of environment and for ensuring federal takeover in this area. [...] In performing these two actions, the federal government has endowed itself with a kind of domination in the entire field of the environment, including that which was constitutionally reserved for the exclusive control of the provinces and for which Québec has for many years now exercised its responsibilities.[353]

Housing: See paragraphs 313 (Charlottetown Accord) and 337.

Forestry, mining, tourism, recreation, municipal and urban affairs: See paragraph 313 (Charlottetown Accord).

Economic union and distribution of powers: See paragraphs 310 and 341.

c) Unilateral powers

Federal spending power: See paragraph 310 and 313 (Charlottetown Accord).

••• Individual and language rights

333. The preamble of the Act establishing the Bélanger-Campeau Commission expresses, among other things, the following considerations:

- Whereas Québec has already demonstrated its respect for democratic values and individual rights and freedoms;
- Whereas Québec has recognized that Quebecers wish to see the quality and influence of the French language assured and to make it the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business;

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[352] Speaking notes for Pierre Paradis, Minister for the Environment, before members of the Standing Senatorial Energy, Environment and Natural Resources Committee, Ottawa, June 16, 1992.

[353] *Ibid.*, p. 12-13 (quotation) [Translation].

- Whereas Québec intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the rights and institutions of the English-Speaking Community of Québec.[354]

••• Institutions

334. There must be a specific role for the Senate. In this context, the government of Québec is prepared to enter into discussions while always respecting the principle, which is fundamental for Québec, that there will be no diminishing of Québec's role regarding the Senate as with all other federal institutions.[355]

The reforming of federal institutions: See also paragraphs 310 and 313 (Charlottetown Accord).

Economic union (The federation council project) and Executive Federalism: See paragraph 341.

••• Intergovernmental policy

a) Conducting intergovernmental relations

335. The position of my government from now on is to negotiate bilaterally and not with eleven entities, to negotiate with the Canadian government that represents the entire population of Canada, bilateral negotiations between the government of Québec and the federal government. Obviously, we will have negotiations with other provinces on a bilateral basis. It is also obvious that we may decide to participate in some conferences where Québec's interests are at stake, but never on constitutional matters.[356]

b) Financial aspects of federalism

336. The financing of health care and social services will require a revision of federal-provincial collaboration based on the following two principles:

- Reestablishment of the federal transfers payments for the established programs financing (EPF)

Federal-provincial collaboration would be reaffirmed on the basis of renewed federal interest in common objectives pursued in health care. Federal contributions to EPF should be based upon economic indicators that take the evolution of expenditures into consideration.

- Reduction of the limits to the provinces' exercise of responsibility.

It seems reasonable to ask the federal government, in following the example of all participants, to contribute to solving the deadlock in financing by refraining from setting rules on financial and fiscal transfers that restrict the full exercising of their responsibilities by the provinces, especially with regard to the defining of the basket of insured services and access to services.[357]

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[354] An Act to establish the Commission on the Political and Constitutional Future of Québec, Q.S. 1990, c. 34 (See part 3: document no. 24); these elements were taken from the preamble of An Act respecting the process for determining the political and constitutional future of Québec, Q.S. 1991, c. 34, amend. by Q.S. 1992, c. 47 (See part 3: documents nos. 25 and 28).

[355] Declaration by Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs on the government's position regarding proposals for reforming the Senate, Québec National Assembly, *Journal des débats*, April 15, 1992, p. 598.

[356] Message to the people of Québec by Prime Minister Robert Bourassa, June 23, 1990 (quotation [Translation]; see part 2 of this document).

[357] Ministère de la Santé et des Services sociaux, *Québec's Health and Social Services: Equitable Funding, Living within our Means*, 1991, p. 88-89.

337.The unilateral withdrawal without prior consultation of the federal government from the Canada-Québec Global Agreement on Social Housing is a rather unacceptable manner for proceeding between two governments. Furthermore, the announced budget freeze of the Canada Mortgage and Housing Corporation (CMHC) will perpetuate a situation, which as regards federal transfers, is unfair for Québec. Indeed, the CMHC's share of budgetary expenditures that are made by Québec hardly exceed 19%. This is on the one hand genuinely below the proportion of really needy households living in Québec. It is also on the other, quite lower than the demographic weight of Québec as contrasted with the whole of Canada. The freezing of the CMHC's budget and the discontinuance of any new commitment threatens to forever eliminate any possibility Québec would have of hoping to catch up in making in its share of the federal expenditures intended for social housing. The current federal withdrawal penalizes Québec far too heavily and cannot be done without some adequate financial compensation.[358]

c) Aboriginal Nations

338.The preamble of the Act to establish the Commission on the Political and Constitutional Future of Québec bears the following message: Whereas Québec recognizes the right of the Amerinds and the Inuit of Québec to preserve and develop their specific character and to assure the progress of their communities [...].[359]

339.The territory of a province may not be changed without the province's consent. This principle is already entrenched in section 43 of the Constitution Act of 1982, and must be abided by in any constitutional agreement recognizing the right of the Aboriginal peoples to self-government. The Québec National Assembly has recognized the principle of Aboriginal self-government in the framework of agreements with the governments.[360]

Self-government and territorial integrity:
See also paragraphs 310 and 313
(Charlottetown Accord).

d) French-Speaking and Acadian Communities of Canada

340.The preamble of the Act to establish the Commission on the Political and Constitutional Future of Québec bears the following message: Whereas Québec supports French-Speaking Communities outside Québec and contributes to the International French-Speaking world: [...].[361]

e) Trade

341.Québec shares the objective of a stronger and more dynamic economic union and is in favour of the free circulation of goods, persons, capital and labour. It favours the elimination of obstacles to the free circulation of economic resources. We must look for ways that draw on intergovernmental harmonization and joint consultation to develop the Canadian economic union. The federal proposals of September 1991 are in this respect disproportionate compared to the objectives that are to be pursued. Specifically, the courts should not manage the economy or intervene in the drafting or implementation of economic policy. Nor should federal authorities be given unlimited powers that could destroy the powers of the provincial legislatures.

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[358] Letter from Claude Ryan, Minister of Municipal Affairs, responsible for Housing, to Elmer Mackay, Minister responsible for the Canada Mortgage and Housing Corporation, Québec, June 1, 1993.

[359] Q.S. 1990, c. 34 (quotation; see part 3: document no. 24); see also the preamble of An Act respecting the process for determining the political and constitutional future of Québec, Q.S. 1991, c. 34, amend. by Q.S. 1992, c. 47 (See part 3: documents nos. 25 and 28).

[360] Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, at the Canadian Bar Association Meeting in Whistler, February 24, 1992, p. 6 (quotation; see part 2 of this document).

[361] Q.S. 1990, c. 34 (quotation; the statute is reproduced in part 3, see document no. 24); see also the preamble of An Act respecting the process for determining the political and constitutional future of Québec, Q.S. 1991, c. 34 amend. by Q.S. 1992, c. 47 (See part 3: documents nos. 25 and 28).

Furthermore, do we need a new institution, the Council of the Federation, when we can very easily get along with existing institutions? For example, the First Ministers' Conference on the Economy, as was stipulated in the Meech Lake Accord, could be constitutionalized and supplemented by a permanent secretariat, which is already in place and is responsible for preparing federal-provincial conferences. We would thereby respect the principles of executive federalism, which is one of the main characteristics of our Canadian Federation and which directly involves the provincial first ministers in the drafting of national policies, through federal-provincial conferences.[362]

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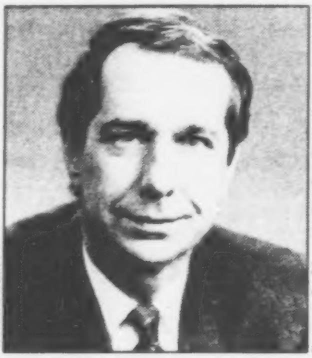
[362] Speaking notes for Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs, before a banquet of the Chambre de Commerce d'Anjou, Montréal, January 15, 1992, p. 10; speaking notes for Gil Rémillard at the Canadian Bar Association Meeting in Whistler, February 24, 1992, p. 4-5 (See part 2 of this document).

GOVERNMENT OF DANIEL JOHNSON, Jr.,

(JANUARY 11, 1994 TO SEPTEMBER 26, 1994)



Bernard Vallée

Source: Archives nationales du Québec

••• Distribution of powers

a) General principles

342. The government of Québec shares the objectives to make policies and programs more efficient and accessible, to come to an agreement on the most suitable order of government for providing a service, while taking into consideration the priorities and conditions specific to each province.[363]

b) Sectorial jurisdictions

343. Some major initiatives on the part of the federal government in fields of provincial responsibility such as health care and education seem difficult to reconciliate with the objectives of efficiency and subsidiarity that should prevail, especially in a context of rarified financial resources.[364]

344. The elimination of duplication in the labour force sector is essential. An agreement regarding labour force, which suits our priorities and the specific conditions that prevail here, represents one of the first accomplishments that would demonstrate that we are seeking to reduce duplications.[365]

345. That the Québec National Assembly petition Jean Chrétien and the liberal federal government to respect the unanimous consensus of all participants regarding Québec's need to exclusively exercise the jurisdictions attaching to labour training.[366]

346. Québec has never favoured an increased federal presence in the sector of stock exchange securities, an area that is strictly a provincial jurisdiction. On the contrary, it has regularly manifested its opposition to federal initiatives in this matter [...]. Federal regulatory action would be untimely both constitutionally as well as for boosting efficiency. Such regulatory action would result in the duplication of rules and surveillance, then inevitably in heavier administrative and financial charges for issuers, investors and intermediaries.

[...]

For several years now, Québec has given top priority to the harmonization of its regulatory action applicable to the providing of financial services in Canada and abroad, in the same way as it has given priority to the decreasing of costs inherent in this regulatory action and the coherence of the latter from one sector to another. These policies bear witness to the priority that we give to the efficient operations of the market, while ensuring that the specific aspects of Québec be taken into account.[367]

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[363] Letter from Daniel Johnson, Prime Minister of Québec, to Marcel Massé, President of the Queen's Privy Council for Canada, Minister of Intergovernmental Affairs and Minister responsible for Public Service Renewal, Québec, February 15, 1994.

[364] *Ibid.* (quotation) [Translation].

[365] *Ibid.*

[366] Unanimous resolution of the Québec National Assembly dated April 14, 1994.

Internal Trade and Distribution of Powers: See paragraph 351.

c) Unilateral powers

347. The reducing of duplication must go hand in hand with setting boundaries for federal spending power, if we want both orders of government to exercise their responsibilities in the most efficient manner possible. This objective must also favour the fact that each government act clearly within the limits of the powers assigned to it under the Constitution.[368]

••• Intergovernmental policy

a) Financial aspects of federalism

348. Québec has for many years sought a reform of transfers to the provinces in order that they be adapted to the financial and budgetary realities of the 1990s and that they return to a certain number of basic objectives:

- improving the balance between the responsibilities assumed by the governments and the fiscal resources at their disposal;
- improving the redistribution of wealth in Canada;
- increasing the efficiency of the Canadian public sector.[369]

349. With regard to the issue of harmonizing federal and provincial taxation policies, Québec is prepared to collaborate on improving how the tax systems operate, but with the certainty of keeping its autonomy in determining Québec's fiscal policy.[370]

350. The ceiling on equalization payments creates a widening gap as regards the objective set forth in the Constitution, which is to give provinces sufficient revenues so that they may offer public services of a roughly comparable quality and fiscal level.[371]

b) Trade

351. With the federal government, the governments of the other provinces and territories, the government of Québec is a signatory to the Agreement on Internal Trade whose preamble states the following resolutions, namely to:

> PROMOTE an open, efficient and stable domestic market for long-term job creation, economic growth and stability;
>
> REDUCE and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada;
>
> PROMOTE equal economic opportunity for Canadians;
>
> ENHANCE the competitiveness of Canadian business;

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[367] Letter from Daniel Johnson, Prime Minister of Québec, to Marcel Massé, President of the Queen's Privy Council for Canada, Minister of Intergovernmental Affairs and Minister responsible for Public Service Renewal, Québec, February 16, 1994 (quotation) [Translation].

[368] Letter from Daniel Johnson, Prime Minister of Québec, to Marcel Massé, President of the Queen's Privy Council for Canada, Minister of Intergovernmental Affairs and Minister responsible for Public Service Renewal, February 15, 1994 (quotation) [Translation].

[369] Press release entitled *Finance Ministers Conference*, André Bourbeau, Minister of Finance, Federal-Provincial Conference of Finance Ministers, Montréal, January 21, 1994, (quotation) [Translation].

[370] *Ibid.* (quotation) [Translation].

[371] Statement by André Bourbeau, Minister of Finance, press release entitled *Renouvellement de la péréquation*, Federal-Provincial Conference of Finance Ministers, Montréal, January 21, 1994.

> CONSULT on matters related to internal trade;
>
> RECOGNIZE the diverse social, cultural and economic characteristics of the provinces; and
>
> RESPECT the legislative authorities of Parliament and the provincial legislatures under the Constitution of Canada.[372]

First of all, the Agreement defines the operating principles governing the openness of the Canadian market. They are based on the concept of free movement of persons, goods, services and investments. Secondly, it lays down the general rules that must apply, unless otherwise provided, to all eleven sectors covered: public procurement, investment, labour mobility, consumer-related measures and standards, agricultural and food goods, alcoholic beverages, natural resources processing, energy (under negotiation), communications, transportation and environmental protection. From an institutional standpoint, the AIT provides for the implementation of binding dispute resolution procedures, as well as for the creation of a Committee of Ministers on Internal Trade and a permanent body called the Internal Trade Secretariat.

Lastly, chapter 18 of the AIT deals with a series of general provisions, and lists, among other things, a number of full or partial exceptions several of which are important for Québec such as regional development, culture, taxation and financial sectors.

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[372] *Agreement on Internal Trade*, July 18, 1994.

GOVERNMENT OF JACQUES PARIZEAU

(SEPTEMBER 26, 1994 TO JANUARY 29, 1996)

Éric Parizeau

Source: Collection Assemblée nationale

••• Status of Québec

352. Québec's project for accession to sovereignty along with an offer for a new economic and political partnership with Canada.[373]

The government of Jacques Parizeau was elected on a platform of holding a referendum on the accession of Québec to sovereignty. On December 6, 1994, the government unveiled a draft bill on the sovereignty of Québec that was submitted to the general consultation of all Québec regions via the commissions on the future of Québec.

Following the report of the National Commission on the future of Québec, the government made public Bill 1 entitled An Act respecting the future of Québec (hereafter, the Bill) that was submitted to a referendum on October 30, 1995.

The Bill provided that Québec's accession to sovereignty be preceded by a formal offer of economic and political partnership with Canada. A one-year maximum deadline was provided for the negotiation of this partnership, subject to a decision otherwise by the Québec National Assembly.

The Bill authorized the National Assembly to proclaim the sovereignty of Québec once it would have approved the partnership treaty or, upon obtaining notification from the orientation and supervision committee for negotiations, once it would have realized that such negotiations would lead nowhere.

The offer to Canada of an economic and political partnership was to be based upon the three-party agreement of June 12, 1995 between three political parties: the Parti québécois, the Bloc québécois and the Action démocratique du Québec. This agreement involved the proposing of a treaty to Canada that would have provided appropriate measures for maintaining and improving the existing economic space, establishing rules for the division of federal assets and management of the common debt, creating joint political institutions required to administer the economic and political partnership.

The three-party agreement stated the priority sectors where a treaty would have to ensure that the partnership has the authority to act: customs union, free movement of goods, free movement of individuals, free movement of services, free movement of capital, monetary policy, labour mobility and citizenship. The Agreement also evoked the possibility—with some examples—that members would be free to make agreements in other areas of common interest. Lastly, the offer was to include the creation by treaty of joint political institutions needed for administering the partnership, specifically the creation of a council, a secretariat, an assembly and a tribunal for resolving disputes.

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[373] This paragraph presents a synthesis of the government project (See the bill and the three-party agreement forming the basis of this project in part 3: document no. 30). See also the address to the nation delivered by Jacques Parizeau on October 1, 1995 reproduced in part 2 of this document.

As regards Québec's accession to sovereignty, the Bill provided constitutional provisions, especially regarding the drafting of a new Québec constitution by a constituent commission to be ultimately submitted to the people of Québec for approval by referendum. The Bill lays down various constitutional provisions, among other things, guarantees regarding the rights of the English-Speaking Community and the aboriginal nations.

The Bill included other information dealing with the various terms of Québec's accession to sovereignty: territorial integrity, citizenship, legal tender currency, treaties, international organizations and alliances. Lastly, it stipulated transitional provisions. On October 30, 1995, the No option carried the day with a result of 50.58% and the Yes option obtained 49.42%.[374]

353. Jean Lesage called on us to be "Masters in our own Home," Daniel Johnson Sr. wanted "Equality or independence," Robert Bourassa proposed the "Distinct Society." One after another, our attempts to expand or just to preserve Québec's autonomy within Canada have run into increasingly firm rebuttals from our neighbours.

Twelve years ago, Pierre Trudeau's unilateral patriation dwindled the National Assembly's powers against our will, with a Constitution that Québec has never signed. Four years ago, the death of the Meech Lake Agreement sounded Canada's refusal in recognizing—albeit symbolically—our difference. As of today, the basic law of Canada does not recognize Québec as a nation, a people or even as a distinct society. A sad state of affairs. [...]

Three years ago, united as never before in the Bélanger-Campeau commission on the future of Québec, federalists and sovereigntists agreed on a common strategy and speaking as one, they rejected the present Canadian regime. Federalist members of the Commission wanted to give Canada one last chance for an in-depth renewal, failing which full sovereignty for Québec would then be proposed to Québecers in a referendum.

The scenario played itself out inexorably. Two years ago, the Charlottetown accord was submitted to the electorate and was beaten, both in Québec and in Canada. [...] That was to be Canada's last chance. [...]

The more time goes by, the more the Canadian majority is determined to act as though there is but one nation in Canada, as though all provinces are equal. [...] With the passing of time, decisions we wish to make as Quebecers will increasingly be blended into the great Canadian rush for uniformity. This is the Canada of tomorrow. Do we want to be a part of it?

[...]

[There must be] something. That something is sovereignty! But sovereignty that belongs to Quebecers from all regions, all social, linguistic, cultural and political origins.[375]

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[374] See Directeur général des élections du Québec, *Référendum 1995. Rapport des résultats officiels du scrutins*, 1995, p. 49 (an extract from this Official Report and the resolution of the Québec National Assembly on the referendum question are reproduced in part 3: document no. 31).

[375] Message by the Prime Minister Jacques Parizeau at the time of the publication of the draft bill on sovereignty and the announcement of the commissions on the future of Québec, December 6, 1994, p. 3-4.

••• Constitutional reform process

The impossible in-depth reform of Canadian federalism: See paragraph 364.

••• Distribution of powers

a) Sectorial jurisdictions

354.In the field of health care, not only has Ottawa stepped into a sector of exclusive provincial jurisdiction, but each of its initiatives goes against the will of the provinces with frequent harmful consequences regarding these provinces' orientations. Québec beckons the other provinces to put pressure on the federal government so that it ceases to encroach upon the health care sector. As for Québec, it intends to fully assume its exclusive power and responsibilities in this field, all the while especially preserving its prerogative for defining what is "medically necessary" for the purposes of the insured services. With regard to health care services, the provinces do not have to ask Ottawa for any orientation whatsoever; it is the provinces' responsibility to offer their respective citizenries the health services that they are entitled to expect. It therefore becomes obvious that the federal government must withdraw from this sector into which it is contributing less and less, and where its actions do not in any way improve accessibility to Canada's health care services.[376]

The Financing of Health Care and Social Programs: See also paragraphs 362, 365 and 366.

355.That the National Assembly reaffirm the consensus voiced [...] on 13 December 1990 and communicated in the following ministerial statement on manpower adjustment and vocational training:

- Québec must have sole responsibility of the manpower adjustment and vocational training policies within its territory and, consequently, must repatriate the moneys that the Federal Government allocates to Québec for these programmes;
- In the current constitutional context, and in view of offering better services to its clientèle, Québec must regain the control and the administration of the different services pertaining to employment and to manpower development and of all of the programmes that are likely to be financed by the unemployment insurance funds on the territory of Québec for this purpose, and must accordingly receive the sums that normally are attributed for taking over such responsibility;
- The Government of Québec and the representatives of the employers, the unions and the cooperative sector intend to oppose any initiative on the part of the Federal Government that would constitute interference in Québec's fields of jurisdiction.

And that, consequently, it request that the Government of Québec and the Minister of Employment immediately commence formal discussions with the Federal Government in order to ensure that this consensus and the promotion of the interests of the population of Québec are respected.[377]

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[376] Communiqué from the staff of Jean Rochon, Minister of Health and Social Services, Interprovincial Conference of Health Ministers, Vancouver, April 11, 1995.

[377] Unanimous resolution of the Québec National Assembly dated December 4, 1995 (quotation).

356. Considering the failure of federal administration over ground fish harvesting, Québec demands the administration of fisheries. The transferring of responsibility proposed by Québec cannot be carried out within the framework of a federal withdrawal aimed at reducing its operating costs. Rather it must be accompanied with the transferring of human and financial resources making it possible for Québec to take full responsibility for the future development of its fisheries industry.[378]

357. The fact that the federal government legislates in the field of clearing corporations, especially when applied to securities, constitutes an encroachment on an area of exclusive provincial jurisdiction that Québec cannot accept. This sector of jurisdiction has in fact been continuously and vigorously protected by all the successive governments of Québec.[379]

358. Québec does not share the viewpoint expressed in the parliamentary task force report on the commercialization of Canadian National in which local interest railways should come under federal authority. Québec has already made proposals to the other provinces for harmonizing their regulations regarding such railways.[380]

359. As for its airports, Québec must ensure that municipalities do not accept charges that are heavier than their financial capacities and that Québec's areas of jurisdiction are respected in agreements between the federal government and municipalities. The government of Québec neither can nor does it want to take the federal government's place in the role of financial support that the latter has always assumed, without first having the legislative, regulatory and fiscal control over the field of activity.[381]

360. Québec demands the regulatory, legislative and fiscal powers that will enable it to assume the passing of responsibilities and infrastructures in maritime transport.[382]

Transportation: See also paragraphs 374-376.

361. Federal intervention in housing is an encroachment in a field of provincial jurisdiction. The federal government has imposed an inflexible approach to intervening in housing. It has also subjected its financial participation to numerous administrative rules, objectives and Canada-wide criteria that make the planning of actions difficult in the Québec context. The presence of the federal government in this sector of activities has created many administrative overlaps that cause additional costs and that detract from the coherence of the interventions.[383]

Housing: See also paragraph 368.

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[378] Communiqués from the staff of Marcel Landry, Minister of Agriculture, Fisheries and Food, Federal-Provincial Conference of Fisheries ministers, Victoria, November 1, 1995, nos. 1 and 2. Communiqué no. 2 gives the most detailed information on the Québec proposal.

[379] Letter from Jean Campeau, Minister of Finance, to Paul Martin, federal Minister of Finance, Québec, August 14, 1995 (quotation) [Translation].

[380] Letter from Jacques Léonard, Minister of Transportation, to Douglas Young, federal Minister of Transportation, Québec, April 10, 1995.

[381] *La politique du gouvernement du Québec en matière d'infrastructures aéroportuaires*, ministère des Transports, December 6, 1995, p. 10.

[382] Communiqué from the staff of Jean Campeau, Minister of Transportation, regarding federal maritime policy, Québec, December 14, 1995.

[383] Government of Québec, *Coûts du fédéralisme pour le Québec dans le domaine de l'habitation*, an analysis made by the Société d'habitation du Québec, September 1995, p. 21.

b) Unilateral powers

362. The most detestable federal disengagement in the financing of social programs is that the federal government maintains its national standards in health care and seeks to impose new ones in other social programs.[384]

Federal actions and the financing of social programs: See also paragraphs 365-366.

Federal initiatives in housing: See paragraph 361.

••• Language rights

363. We have pledged [...] to enshrine in the Québec Constitution, in clear, unambiguous terms, the right of our English citizens to English schools, from kindergarten to university; the right for the English communities to control these schools. The right to have access to courts and the Québec National Assembly in English. It is obvious to us that the English Community must be a party to the elaboration of the Constitution of a sovereign Québec. And a formula has to be found to ensure that, from then on, no constitutional changes affecting that community shall be made without their consent. Also we want to continue ensuring by law the right to have medical care in the English language. When we will patriate our share of the CBC, we will maintain public TV and radio service in English.[385]

••• Intergovernmental policy

a) Conducting intergovernmental relations

364. The issue of Québec's participation in Canadian intergovernmental conferences fits into the following frame of reference:

- Québec intends on maintaining with the federal government those relationships needed for the proper operations of both governments, while heeding their respective jurisdictions.
- The interests of the people of Québec will serve as an essential guide for the government's actions whose objective is not to paralyze the federal system, nor to demand an in-depth reform since it is obvious since Meech and Charlottetown that this is impossible, but to find its way by accessing full political sovereignty.

The active presence of Québec will be ensured by participation at ministerial level in conferences or meetings dealing with shared jurisdictional issues. Other cases will be handled on a case-by-case basis by the government. Generally speaking, without practicing the empty chair policy, Québec will not participate actively on the ministerial level in conferences whose themes involve its exclusive power; generally, a member of the civil service will represent Québec as a technical participant or an observer.

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[384] Communiqués from the staff of Pauline Marois, Minister of Finance, Minister of Revenue and Minister responsible for the Family, Press Conference, Québec, December 12, 1995, no. 1.

[385] *A Frank Talk Between Neighbours About the Present and the Future.* Speaking notes for Jacques Parizeau before the Canadian Club, Toronto, November 22, 1994, p. 9-10 (quotation; see also Bill 1, An Act respecting the future of Québec reproduced in part 3: document no. 30).

Furthermore, Québec intends on participating actively in conferences or meetings whose agenda will include the reviewing of issues linked to opening markets or the "continentalization" of various activities.

Québec also intends on assessing the timeliness of its participation in conferences in light of their efficiency.[386]

b) Financial aspects of federalism

365. As regards social issues, Québec beckons the provinces to more firmly oppose the federal government's reductions for the financing of established programs by emphasizing that this unrealized gain should be compensated by the transferring of tax points.[387]

366. During the 1960s and 70s, the federal government incited the provinces to set up health care, social assistance and post-secondary education programs by offering to share the expenses 50-50 with them; today the same federal government is washing its hands of such commitments. Québec considers the current arrangement for financing social programs by the federal government to be unacceptable. It demands that the federal government withdraw from the financing of social programs and that it transfer the tax points to Québec that it uses to finance its actions in this sector. This demand constitutes a concrete answer to the problem of endless cuts in federal transfers.[388]

Federal disengagement and the need for a corresponding transfer of resources:
See also paragraphs 356, 359, 360 and 376.

367. A greater harmonization of sales taxes in Canada must not be carried out at the price of a loss of fiscal autonomy for Québec. For the government of Québec, fiscal autonomy is a fundamental question both regarding consumption tax as well as other areas of taxation, and it will never be abandoned. Discussions surrounding the sales tax system should provide the opportunity for broadening the debate on the sharing of fiscal sectors between the federal government and the provinces, especially considering the responsibilities attributed to both levels of government.[389]

368. Québec has on the whole received, from federal action in housing, financial benefits far lower than the share it should have received.[390]

c) Aboriginal Nations

369. In the 1970s, Québec was the first province in Canada to sign a modern treaty with some of its Aboriginal Communities. In the 1980s, Québec was the first province to recognize that Aboriginal Peoples constitute distinct

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[386] Declaration by Louise Beaudoin, Minister responsible for Canadian Intergovernmental Affairs, regarding Québec's participation in Federal-Provincial Conferences held since the election of the new government of Québec, Winnipeg, October 5, 1994.

[387] Communiqué from the staff of Jean Rochon, Minister of Health and Social Services, Interprovincial Conference of Health Ministers, Vancouver, April 11, 1995.

[388] Communiqués from the staff of Pauline Marois, Minister of Finance, Minister of Revenue and Minister responsible for the Family, Press Conference, Québec, December 12, 1995, nos. 1 and 2.

[389] Statement by Jean Campeau, Minister of Finance, press release from the government of Québec, Federal-Provincial Conference of Finance Ministers, Toronto, October 14, 1994.

[390] Government of Québec, *Coûts du fédéralisme pour le Québec dans le domaine de l'habitation*, (executive summary) an analysis made by the Société d'habitation du Québec, September 1995, p. 2 (quotation) [Translation].

nations within Québec. During the 1990s, Québec also intends on pursuing this pioneering process by granting Aboriginal Peoples a large measure of governmental autonomy. We make the commitment in this respect to allow the Aboriginal Peoples of Québec to be just as, if not more, responsible for their own development as any other group of Aboriginal Peoples in North America.[391]

d) French-Speaking and Acadian Communities of Canada

370.Québec sovereignty does not mean that we will turn our backs on fellow francophones elsewhere in Canada. On the contrary, in acquiring the status of a sovereign state, we will have specific responsibilities towards them.[392]

371.Québec's policy with regard to the French-Speaking and Acadian Communities of Canada forms a part of the government's determination to give a new start with regard to these communities. To do so, the government of Québec intends on:

- promoting contacts between members of the French-Speaking and Acadian Communities of Canada and Quebecers;
- backing the pursuit of projects that will bring about such exchanges;
- ensuring by the implementation of liaison structures that government actions will stay in contact with this new dialog.

To provide a new start for its actions, the government intends on promoting areas that are most favourable for the establishment of linguistic solidarity, namely through culture and communications, education and the economy.

For the implementation of Québec's policy, various means of concertation are planned:

a) Sectorial liaison tables on culture and communications, education and the economy. The tables are composed of experts in these sectors.

b) A Triennial Concertation Forum. The government of Québec takes the initiative for holding a large gathering of members of the French-Speaking and Acadian Communities and Quebecers. It will be a place for exchanges, displaying achievements and promoting French-Speaking gatherings.

c) Regional concertation. The Québec offices in Canada coordinate the regional concertation with French-Speaking and Acadian Communities.

d) Interministerial concertation. The Secrétariat aux affaires intergouvernementales canadiennes takes charge of coordinating interministerial activities related to French-Speaking and Acadian Communities.

e) The Financial Support Program for partners. This program provides backing for partnership projects in the fields of culture and communications, education and the economy.

Moreover, in future intergovernmental agreements, the government of Québec will favour bilateral cooperation activities that fit in with the objective of revitalizing French among French-Speaking Communities.[393]

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[391] Opening speech by Jacques Parizeau, Prime Minister elect, at a press conference held on September 14, 1994, p. 9 (quotation) [Translation]; as regards government policy towards Aboriginal Peoples, see speaking notes for Prime Minister Jacques Parizeau at a dinner-meeting with Montagnais and Attikamek Chiefs, Beaupré, October 28, 1994; see also Bill 1, An Act respecting the future of Québec reproduced in part 3: document no. 30.

[392] *A Frank Talk Between Neighbours About the Present and the Future*. Speaking notes for Jacques Parizeau before the Canadian Club, Toronto, November 22, 1994, p. 10 (quotation).

e) Trade

372.Québec intends on participating actively in conferences or meetings whose agenda will include the reviewing of issues linked to opening markets or the "continentalization" of various activities such as transportation or communications. Québec will contribute its efforts to measures seeking to ensure the proper operations of the economic space that it shares with other parts of Canada and to guarantee the greatest possible harmonization of this economic space with the largest economic groups—North America and GATT—which soon will become the World Trade Organization.[394]

373.Québec insists in drawing the other provinces' attention to the importance of emphasizing the mutual benefits from economic exchanges that take place in the Canadian economic space and it wants to further the advancement of negotiations over the Agreement on Internal Trade.[395]

f) Transportation

374.Québec beckons the federal government to assume its responsibilities with regard to railway companies under its jurisdiction and to put a stop to the disorderly abandoning of the network, which is progressing at the expense of Québec's economic interests. Over the short term, Québec want to avoid the premature destruction of important transportation infrastructures and facilitate their transfer to other businesses under acceptable conditions.[396]

375.The basic railway grid must be defined by each of the provinces and not by the Canadian Transportation Agency.[397]

376.Over the past years, Québec governments of all political colours have denounced federal disengagement from social and economic programs. Today, the National Marine Policy is endangering the competitiveness of our businesses' maritime system, river-oriented trade and the comparative advantages of the St. Lawrence. When finding a solution to its chronic problem of financial incapacity is at issue, Ottawa seems totally devoid of imagination. Until now, the only solution adopted by Ottawa has been to stick the provinces with the bill without providing them with the financial means to pay it.[398]

Transportation: See also paragraphs 358-360.

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[393] Government of Québec, Secrétariat aux affaires intergouvernementales canadiennes, *Québec's policy towards the French-Speaking and Acadian Communities of Canada: a dialog, solidarity in action*, 1995; *Reinforcing solidarity around common interests*, communiqué from the staff of Louise Beaudoin, Minister responsible for Canadian Intergovernmental Affairs, March 30, 1995.

[394] Declaration by Louise Beaudoin, Minister responsible for Canadian Intergovernmental Affairs, regarding Québec's participation in Federal-Provincial Conferences held since the election of the new government of Québec, Winnipeg, October 5, 1994, p. 3.

[395] *The Prime Minister insists on the importance of internal trade*, press release from the staff of Jacques Parizeau, 36th Annual Conference of Provincial First Ministers, St. John's, Newfoundland, August 24, 1995.

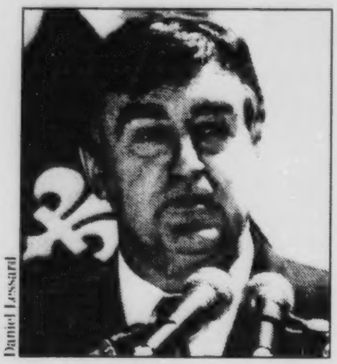
[396] *Veiller aux intérêts immédiats du Québec en preparant l'avenir*. Speech by Jacques Léonard, Minister of Transportation, Meeting of Ministers responsible for Transportation and Highway Safety, Winnipeg, October 5, 1994, p. 3.

[397] Letter from Jacques Léonard, Minister of Transportation, to Douglas Young, federal Minister of Transportation, Québec, April 10, 1995 (quotation) [Translation].

[398] Declaration from the staff of Jean Campeau, Minister of Transportation, regarding federal maritime policy, Québec, December 14, 1995.

GOVERNMENT OF LUCIEN BOUCHARD

(JANUARY 29, 1996 TO MARCH 8, 2001)


Daniel Lessard

••• Status of Québec

377.In North America, Québec is the only society with a French-Speaking majority, a well-defined territorial base, and political institutions it controls. The people of Québec possess all the traditional characteristics of a nation. [...] The Québec people subscribe to the democratic concept of a French-Speaking nation, pluralist in its culture, and open to international immigration [...].[399]

378.[In the Bertrand case], the federal government took the serious decision to go before a court to assert that the future of Quebecers does not belong to them. [...] To those who would have forgotten, to those who would deny it, to those who fear the strength of Québec, but mainly to us, who must state loud and clear that we are entitled to dispose of our own destiny, that we have set the most democratic rules of all, that we have respected the popular vote each time expressed and that, each time, our democracy has grown in strength, our right to choose become that much stronger. [...] There is nothing more sacred in the democratic life of a people than its capacity to dispose of its own destiny. This is the very essence of their liberty.[400]

379.As a reaction to federal intervention in the Bertrand case, the Québec National Assembly adopted the following resolution: "That the National Assembly reaffirm that the people of Québec are free to take charge of their own destiny, to define without interference their political status and to ensure their economic, social and cultural development."[401]

380.The only judge and jury on the future of Québec happens to be the people of Québec. No judge can stand in the way of a people's democratic expression. The government of Québec will not go before the Supreme Court of Canada regarding the federal government's Reference concerning the future of the Québec people. This is a purely political and not legal issue.[402]

381.That the National Assembly demand that the men and women politicians of Québec recognize the will, democratically expressed by Quebecers in the referendum of 30 October 1995 held in compliance with the Referendum Act, thus acknowledging the fundamental right of Quebecers to determine their future pursuant to this Act.[403]

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399. Briefing notes for a speech by Québec Prime Minister Lucien Bouchard, delivered at the "Forum des Fédérations" held in Mont-Tremblant, October 6, 1999, p. 3 (quotation).

400. Speech by Lucien Bouchard at a debate on a motion proposing to reassert the liberty of Québec to determine its political status, Québec National Assembly, *Journal des débats*, May 22, 1996, p.1244, 1245 and 1247 (quotation) [Translation].

401. Resolution of the Québec National Assembly dated May 22, 1996 (quotation; see part 3: document no. 32).

402. Press conference by Paul Bégin, Minister of Justice and Attorney General, September 26, 1996.

403. Unanimous resolution of the Québec National Assembly dated May 21, 1997 (quotation; see part 3: document no. 35).

382. While the decision of the Supreme Court of Canada, in the case of the federal government's reference to the Supreme Court of Canada on Québec's accession to sovereignty, to appoint an *amicus curiae* is a part of its powers, the person so appointed shall not have either the authority or the legitimacy to speak on behalf of the people or the government of Québec. The appointment of an *amicus curiae* does not in any way modify the position of the government of Québec by which Québec's accession to sovereignty is a political issue that is not a question to be decided by legal proceedings, but by the people of Québec.[404]

383. The federal government and the rest of Canada must [...] understand, regardless of any Reference:

- that the people of Québec have always possessed, now possess and will continue to possess the fundamental and inalienable right to freely, democratically and without interference dispose of their political future;
- that this fundamental right of the people of Québec is exercised within the framework of democratic institutions that belong to them and that are of a remarkable vitality;
- that these same institutions, including the democratic decision that the people of Québec will make during the next referendum must be respected; and,
- that the future and destiny of the people of Québec may not be subjugated to the will of the government and federal parliament as well as to that of the other provinces. It is the responsibility of any democrat, and especially that of the government of Québec, to recall today at the beginning of this hearing, where the court has been proposed with the mandate to substitute itself in the rights of a people, these inalienable rights without which democracy cannot exist.[405]

384. The opinion handed down by the Supreme Court of Canada constitutes an important political event. The government of Québec, steadfast in its responsibility, has refused to participate in this episode of the federal political strategy and has firmly reiterated the right of Quebecers to choose their future. The Canadian government has failed in its attempt to have the core elements of its anti-sovereignty offensive validated. The opinion of the Court recognizes that a winning referendum would not only have democratic legitimacy, but that Canada would be obliged to recognize this legitimacy and could not deny the right of Québec to seek going through with such sovereignty. The opinion confirms that following a Yes, Canada would be obliged to negotiate with Québec. These negotiations would involve sovereignty and not a renewal of federalism. On the nature of the negotiations, the Court imposes obligations on the federalists to which sovereigntists have already adhered for some time. In the event of deadlocked negotiations, the Court does not dare give specific instructions but in broaching this subject, it does not in

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[404] Press conference by Paul Bégin, Minister of Justice and Attorney General, Sainte-Foy, May 9, 1997; position reiterated upon the designation of the *amicus curiae* (See the press release by Paul Bégin dated July 14, 1997).

[405] Declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, at the beginning of hearings on the case of the Supreme Court Reference, February 16, 1998 (quotation) [Translation].

any case evoke the hypothesis that Quebecers should resign themselves to remain in Canada and renounce their democratic decision. On the contrary, the Court only evokes one possibility, it is that to break a deadlock Québec should alone declare its sovereignty and call upon international recognition. By evoking a recognition facilitated in the case of intransigence towards Québec, the Court provides a supplementary condition to the success of the negotiations. Finally, the Court does not in any way put in doubt the right of the Québec National Assembly to decide, alone, what the wording of the question and the majority threshold will be.[406]

385. Before, during and after [the episode of the federal reference to the Supreme Court of Canada] the government of Québec has always maintained that accession to sovereignty is an essentially political issue. Affirming this does not in any way mean putting oneself above the law. It is refusing to let Québec be subject to the interpretation that the federal government wishes to make of the role played by the Supreme Court of Canada and the rulings that it has made.[407]

The federal Reference and Bill C-20: See paragraphs 393, 395 and 398.

386. The Québec government denounces the irresponsibility of people who resort to this partitionist rhetoric and, even more so, the irresponsibility of federal ministers and politicians who present the dismemberment of Québec as both a possibility and a defendable demand and who thus offer a moral endorsement to those who propound these arguments. All democrats, federalists, and sovereigntists should clearly disassociate themselves from such talk. Québec's territorial integrity is guaranteed before the accession to sovereignty under the rules of the Canadian Constitution and, after sovereignty by the well-established and imperative principles of general international law. The Québec government thus condemns all attempts and invitations to deny or deform this reality for the purpose of creating polarization, sowing discord, and encouraging a degradation of relations between the various components of Québec society. Québec's borders are geographical and historical. Never will the government agree to their being redrawn on the basis of linguistic, racial, or ethnic considerations.[408]

Territorial Limits and Bill C-20: See paragraphs 397-398.

387. Does the document [Calgary Declaration] recognize the existence of the Québec people? In my view, here we touch upon one of the saddest facets of the history of relations between Quebecers and Canadians. When observers wonder a few years from now why these two peoples were unable to continue to live under the same federal regime, the answer will be,

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[406] Briefing notes for a preliminary statement by Lucien Bouchard following the Opinion of the Supreme Court of Canada on the federal government's Reference, August 21, 1998 (See part 2 of this document).

[407] Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, "Droit, démocratie et souveraineté: Joseph Facal répond à Stéphane Dion," *La Presse*, November 17, 1999, p. B3 (quotation) [Translation].

[408] Ministerial statement by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs on the Québec government's position regarding Québec territorial integrity, Québec National Assembly, *Journal des débats*, November 12, 1997, p. 8379-8382 (See part 2 of this document).

above all, a lack of respect and recognition and the refusal of one of the two peoples to recognize the existence of the other. [...] They refuse to recognize us as a people or a nation and [...] even afraid of the vapid expression "distinct society," the English-Canadian prime ministers have scraped the bottom of the barrel, where they undoubtedly found "unique character," an all-purpose term if ever there was one.[409]

The federal Resolution regarding the distinct society: See paragraph 431.

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388. The Calgary Declaration runs [...] counter to Québec's interests. It consecrates the equality of the provinces in such manner as to deny Québec any possibility of renewed or asymmetric federalism or a special status for Québec. It denies the existence of the people of Québec in order to melt them into one Canadian reality in blatant contradiction with the pact between the two founding peoples.[410]

The Calgary Declaration and Social Union: See paragraph 444.

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389. What [the Social Union Agreement] demonstrates is the inability of the federal government and the other provinces to reform the operations of the federal system by integrating and respecting Québec specificity. This agreement consecrates the emerging vision of the rest of Canada united around a State that is less and less federal and more and more resolutely unitary. [...] The Social Union agreement directly questions Québec's status within Canada. The consecration without precedent of recognizing for the federal government a leadership role by the other provinces is totally contrary to the historic aspirations and claims of the people of Québec.[411]

390. The federal government is [...] seeking to give credence to the idea that at the time of the next referendum it is necessary to establish a majority threshold that is greater than that of the absolute majority of votes (50% + 1). [...] Canadian practice, international practice and the practice of the United Nations unanimously indicate that in the matter of referendums on accession to sovereignty, the absolute majority of votes, namely 50% + 1, expresses not only a clear majority but also a rule that must be recognized as being democratic, constant and universal.[412]

391. [...] The introduction of a qualified majority, in whatever form, favours one option over the other and, above all, compromises the democratic principle of one elector, one vote.[413]

392. Québec is a society whose democratic institutions are over two centuries old, where there is political pluralism and

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[409] Statement by Québec Prime Minister Lucien Bouchard following the Meeting of the First Ministers in Calgary, Québec, September 16, 1997 (quotation; see part 2 of this document). The Calgary Declaration is as such reproduced in part 3: document no. 36.

[410] Speech by Lucien Bouchard at a meeting of the Commission permanente des institutions dealing with the Calgary Declaration, Québec National Assembly, *Journal des débats of the Commission permanente des institutions*, June 10, 1998, CI-136, p. 31 (quotation) [Translation].

[411] Speech by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, at the time of reviewing budgetary credits 1999-2000 of the Secrétariat aux affaires intergouvernementales canadiennes , Québec National Assembly, *Journal des débats of the Commission permanente des institutions*, April 28, 1999, CI-9, p. 3 (quotation) [Translation].

[412] *"Rules cannot be changed in the middle of the game,"* conference by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, Forum des fédérations, Mont-Tremblant, October 6, 1999, p. 4 and 5 (quotation).

[413] Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, "Facal répond à Dion (2): des demi-vérités sur la 'majorité claire'," *La Presse*, November 18, 1999, p. B3 (quotation) [Translation].

the fairness of the rules of the game (freedom of speech, financing of political parties, umbrella committees and financing of referendum options) is a fundamental value of the political process. The near *ex aequo* results of the 1995 referendum, the results somewhat more alike in the simultaneous referendums on the Charlottetown Accord and the results obtained in France—to include an international example—during the referendum on the Maastricht Agreement, where the majority was set at 51 % illustrate the ordinary and healthy proceedings of a democracy, in addition to illustrating three cases where the results, although quite tight, were nonetheless respected.[414]

393.The federal Bill C-20 is a head-on collision with the democratic values that are dear to Quebecers. The federal government is seeking to impose a series of legislative padlocks to block the future of Quebecers. On the pretext of clarity, the federal government is acting as if it were seeking to give itself the means to evade the obligation of negotiating in good faith following a referendum favourable to sovereignty, as prescribed by the Supreme Court, advice the federal government itself sought. We subscribe to the obligation of clarity, but we maintain that it is a responsibility only the National Assembly can and must assume.[415]

394.The federal bill proposes to bestow on the Canadian Parliament the right to declare the referendum question inadmissible while it is debated by the National Assembly. In fact, the federal government wants to be able to censure the question, even before the referendum. The Québec people —one of Canada's two founding peoples—would not have the right to propose, by referendum, to their Canadian neighbour a new political or economic arrangement based on the peoples' sovereignty and political equality. Québec would not have the right to propose to Canada an arrangement similar to the one linking the 15 countries of the European Union. In other words, according to the government of Canada, the National Assembly is not free to decide which project it would submit to a vote.[416]

395.C-20 states that Quebecers must be protected against their government but also against themselves since they would be unable to weigh the issues set forth in a referendum question.[417] C-20 [...] is a dismal distortion of the Supreme Court's advisory reference and provides a legalistic veneer to the worst prejudices regarding the capacity of Quebecers to govern themselves democratically as a people.[418]

396.Everybody knows that there is but one rule guaranteeing voting equality, it is the rule of 50% plus one. Any other rule would give the voters of one side more weight than those of the other side. In Bill C-20, the Canadian Parliament wants to reserve the right to set at its own discretion, once the results of the referendum are known, the majority level its deems sufficient. It thus assumes in effect a right of *veto*.[419]

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[414] Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, "Facal répond à Dion (2): des demi-vérités sur la 'majorité claire'," *La Presse*, November 18, 1999, p. B3 (quotation) [Translation].

[415] Briefing notes for a speech by Québec Prime Minister Lucien Bouchard, at the time of the tabling of the Bill respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State, Québec National Assembly, December 15, 1999, p. 1.

[416] *Ibid.*, p. 1-2.

[417] *"Who Fears Quebecers' Democratic Determination?,"* brief presented by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, before the Legislative Committee of the House of Commons entrusted with reviewing Bill C-20, Ottawa, February 24, 2000, p. 2 (quotation; see part 2 of this document).

[418] Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, "Le déclin du fédéralisme canadien," *Le Devoir*, October 30, 2000, p. A7 (quotation) [Translation].

397. In the case where obstacles to Bill C-20 on the referendum question and the results would not prevent negotiations, the federal government has a third idea: putting in doubt Québec's territorial integrity, which every Québec government has deemed inviolable.[420]

398. Bill C-20 makes reference to the issue of borders while no where in the Supreme Court's opinion is there any mention of changing borders or only specifies, in mentioning borders, that it means nothing more than the changing of the current provincial borders into international ones.[421]

399 Not only is Bill C-20 unacceptable for Québec, but it is also unacceptable for all parties represented in the National Assembly. The Québec government does not recognize any legitimacy on the part of the federal government when it comes to such interference in Quebecers' rights to decide for themselves what their future will be. The National Assembly will adopt the question it wants to adopt. The Québec people alone will decide what constitutes clarity. The victorious option will be the one with votes clearing the 50% + 1 of validly expressed ones.[422]

400. The Québec government considers that it is through a bill that the National Assembly must reply to Bill C-20. It must adopt a bill that protects the right of every citizen, of every one of us, to express our vote—only one vote, but a whole vote—to decide our future.[423]

401. The Bill respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State (Bill 99) is somewhat unique in character. For the first time in the political history of Québec, in fact for the first time since Québec has its own parliamentary institutions, namely for more than 200 years, a legislative text emanating from its institutions specifically aims at asserting some of the most fundamental rights and prerogatives of the people and State of Québec.[424]

402. In short, Bill 99 reiterates the political and legal principles that form the basis of Québec society and democracy.

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[419] Briefing notes for a speech by Québec Prime Minister Lucien Bouchard, at the time of the tabling of the Bill respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State, Québec National Assembly, December 15, 1999, p. 2.

[420] *Ibid.*

[421] Press conference by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, regarding Bill 99, An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State, December 15, 1999.

[422] "*Who Fears Quebecers' Democratic Determination?*," brief presented by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, before the Legislative Committee of the House of Commons entrusted with reviewing Bill C-20, Ottawa, February 24, 2000, p. 4 (quotation; see part 2 of this document).

[423] Briefing notes for a speech by Québec Prime Minister Lucien Bouchard, at the time of the tabling of the Bill respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State, Québec National Assembly, December 15, 1999, p. 2.

[424] Speech by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, at the time of the debate on the adoption of the principle of Bill 99, Québec National Assembly, *Journal des débats* May 25, 2000, p. 6167. The Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State is reproduced in part 3: document no. 40.

It especially consecrates the fundamental right of Quebecers to freely dispose of their political future. It reasserts the sovereignty of the State of Québec in all its areas of jurisdiction, both domestically and internationally, as well as Québec's territorial integrity. It forcefully asserts that no other parliament or government may reduce the powers, authority or sovereignty and legitimacy of the National Assembly. It reiterates the principles underlying the Charter of the French Language. Lastly, it states that the rule of the majority of 50% + one vote validly cast, universally recognized and applied, is the one that will continue to prevail in interpreting the results of any referendum held under the Referendum Act through which the people of Québec will exercise their right to dispose of themselves. And the foregoing, it is appropriate to underscore, shall be carried out respectful of the established rights of the Québec English-Speaking Community and respectful of the existing rights of the eleven Aboriginal nations of Québec.[425]

403. The Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State is more than a mere statute; it is more of a charter of the political rights of the people of Québec.[426]

The Status of a Federated Entity and Globalization: See paragraph 425.

••• Constitutional reform process

404. The government will not be associated with any future multilateral constitutional discussions, based on the lucid observation made by former Premier Robert Bourassa following the failure of the Meech Lake Accord according to which the existing constitutional reform process in Canada has been discredited.[427]

The 1982 Patriation: See paragraphs 405-406.

••• Constitutional amending procedure

405. The National Assembly adopted a resolution authorizing an amendment of section 93 of the Constitution Act 1867, in order to allow the implementation of linguistic school boards in Québec. As regards the amending formula, the resolution states that this amendment of the Constitution Act, 1867 does not in any way constitute a recognition by the National Assembly of the Constitution Act, 1982 that was adopted without its consent and states the engagements subscribed by the federal government to proceed rapidly with such amendment, through bilateral action and with the agreement of the National Assembly and of the Federal Parliament.[428]

Amendment of section 93 of the Constitution Act, 1867: See also paragraphs 417 and 450.

406. By its heavy-handed tactics in 1982, Canada committed an historic injustice

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[425] Speech by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, at the time of the debate on the adoption of the principle of Bill 99, Québec National Assembly, *Journal des débats* May 25, 2000, p. 6167. The Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State is reproduced in part 3: document no. 40 (quotation) [Translation].

[426] Speech by Lucien Bouchard at the time of the debate on the adoption of the principle of Bill 99, Québec National Assembly, *Journal des débats*, December 7, 2000, p. 8577 (See part 2 of this document).

[427] Ministerial declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs on Canadian intergovernmental relations, Québec National Assembly, *Journal des débats*, December 4, 1997, p. 9087.

[428] Unanimous resolution of the Québec National Assembly dated April 15, 1997 (Part 3: document no. 33).

to Québec. By allowing the 15-year deadline to lapse that it had set for changing its amendment formula, Canada admits that this injustice is irreparable within the federal system.[429]

••• Distribution of powers

a) General principles

407. The government has neither the intent nor the mandate to abandon any part of Québec's constitutional jurisdictions, whether this involves a constitutional or administrative operation.[430]

408. Successive governments in Québec, regardless of their political option, have always worked to reaffirm its jurisdiction in order to foster its people's control over its economic, social and cultural development and that of its political institutions.[431]

409. The rest of Canada must realize that Québec intends to maintain the integrity of its jurisdictions and fiscal autonomy and that there is no doubt as to the determination of the Québec government on this issue. The agreement of a number or of all the provinces to the administrative restructuring that may result from any re-balancing exercise would not make this operation any less unacceptable for Québec, it being a restructuring that would purport to impose priorities or standards in sectors within Québec's exclusive jurisdiction and which would correspondingly reduce its political autonomy within the federation. Québec will never compromise its autonomy by agreeing to principles that would weaken its jurisdiction and, in the eyes of the Québec people, would run counter to its interests and to the Constitution. What the federal government and the provinces are offering as a re-balancing of the federation is equivalent to a denial of the historic progress made by the Québec people.[432]

410. The imminent arrival of a budgetary surplus in Ottawa is already stirring up creative overlapping and duplicating federal interventionism. In such a context, the government of Québec will firmly defend its autonomy and prevalence over sectors under its jurisdiction. Consequently:

- [...] Québec shall demand respect for its constitutional jurisdictions and shall lay claim to the fullest exercising of them; it shall continue to denounce encroachments by the federal government and it shall demand full financial compensation in the form of tax points, especially within the framework of any new federal agreement or initiative in a sector coming under Québec's jurisdiction;
- [...] In the case of federal disengagement from other sectors, it shall demand, as the case may be, that the transferring of jurisdictions to Québec be accompanied with fair compensation.[433]

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[429] Ministerial declaration by Lucien Bouchard on the unacceptable character of the Constitution Act, 1982, Québec National Assembly, *Journal des débats*, April 16, 1997, p. 6267-6269 (quotation) [Translation]. See also the decision of the Conseil des ministres no. 97-092 on the fifteenth anniversary of the coming into force of the Constitution Act, 1982, April 16, 1997, reproduced in part 3: document no. 34.

[430] Declaration by Lucien Bouchard, press release entitled: *The Re-Balancing of the Roles and Responsibilities of Ottawa and the Provinces: Another Road to Centralization*, Jasper, August 23, 1996 (quotation) [Translation].

[431] Document *Administrative Re-Balancing of Roles and Responsibilities: Québec's Position* tabled by Québec Prime Minister Lucien Bouchard, at the First Ministers' Conference, St. Andrews, August 6-8, 1997, p. 1 (quotation).

[432] *Ibid.*, p. 1 (quotation).

[433] Ministerial declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, Québec National Assembly, *Journal des débats*, December 4, 1997, p. 9087.

411.Quebecers' feeling of alienation stems notably from the fact that the federal government acts as if the Canadian federation has become an almost unitary State. A federation represents a pact between a number of states that includes a clear division of responsibilities which each partner undertakes to observe. The federal government spends when and how it wishes, with its enormous surplus it has obtained, to a substantial degree, by making massive cuts in transfer payments to the provinces. In this way, the division of responsibilities among each partner seems to have lost all its meaning. In the sham federation Canada has become, the legitimate and original aspirations of Québec's people have been "flattened" by the federal steamroller and its propaganda machine.[434]

Federal Principle and Globalization: See paragraph 425.

b) Sectorial jurisdictions

412.The 1996 Speech from the Throne announced a supposed federal withdrawal from various sectors: Forestry, mining, housing, recreation and tourism. Actually, after having intervened heavily in these areas, often counter to Quebecers' priorities and needs, but while using their tax money, Ottawa simply announces that it is disengaging itself financially or that at the end of existing agreements, it will have just about curtailed its contributions, but will keep Quebecers' money for its own purposes.[435]

Social Housing: See also paragraph 460.

413.Québec spends three billion dollars on childhood development programs and currently has put together a unified program. The acceptance of a Canada-wide integrated child allocation program would be tantamount to putting Quebecers' tax money into a general kitty and renouncing the granting of amounts required for Quebecers' needs and priorities.[436]

414.Québec is opposed to implementing any Canada-wide program under the social policies heading, such as a "national" benefit for children, the effect of which would be that Québec could not exercise all its responsibilities in this area. Social policies are its exclusive domain and it intends on exercising full powers in this matter within its territorial boundaries. As such, Québec sought the transfer of tax points or a financial transfer corresponding to the federal government's expenses in that sector in Québec and that it could have posted to the objectives pursued by the family policy announced last January. The federal government has made it known that it will not follow-up on this request.[437]

Reforming Social Policies and the Social Union Framework Agreement: See section c) ("unilateral powers"), at paragraphs 435-448.

415.Despite Québec's objections, the provinces of English Canada and the federal government have imposed on Québec standards for the "national" child benefit. At the same time, Québec is prevented from implementing its own parental insurance plan since the federal government has refused to fully withdraw from the space for contributions paid by employers and workers for maternity leaves within the employment insurance framework.[438]

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[434] Press release by Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, Ottawa, December 8, 1999.

[435] Press release by Lucien Bouchard, Federal-Provincial Conference, Ottawa, June 21, 1996, no. 1.

[436] Declaration by Lucien Bouchard at the annual Conference of Provincial First Ministers, press release, *Social programs: Québec refuses the provinces' proposal to centralize Québec's powers in social affairs in Ottawa*, Jasper, August 23, 1996.

[437] Press release by Pauline Marois, Minister of Education and Minister responsible for the Family and Childhood, Federal-Provincial Conference of Ministers responsible for Social Services, Toronto, April 18, 1997.

National child benefit: See also paragraph 452.

416. While sharing the same concerns on early childhood development, Québec does not adhere to the document on early childhood development, released at the First Ministers' Meeting on September 11, 2000 because some of its sections infringe on its constitutional jurisdictions in social policies. Québec intends to preserve its sole responsibility for developing, planning, managing and delivering early childhood development programs. Consequently, Québec expects to receive its share of any additional federal funding for early childhood development programs without new conditions.[439]

417. The amendment of section 93 of the Constitution Act, 1867, consecrates Québec's exclusive power in education.[440]

Amendment of section 93 of the Constitution Act, 1867: See also paragraphs 405 and 450.

418. University teaching and research are Québec jurisdictions. As such, there can be no question of having a foundation set up by the federal government making strategic choices instead of Québec with regard to areas to be favoured in research. The government of Québec therefore demands that the Canada Foundation for Innovation reserve for Québec its share and that it pay such amount in full to Québec. Requests from universities, as well as those from affiliate university research centres and institutes, will be processed by currently existing project selection mechanisms within the Québec government and on the basis of development priorities in the health care and education sectors. Universities, as well as affiliate university research centres and institutes, will not be able to deal directly with the Foundation to avoid having projects arriving in a disorderly fashion without taking Québec priorities in health care and education into consideration. This procedure enables Québec to reassert the exercising of its right in the areas of jurisdiction that belong to it exclusively, namely in health care and education, while respecting its priorities in research and development and doing justice to the potential for excellence and creativity found in the Québec scientific community.[441]

Research and development: See also paragraph 461.

419. Following the announcement of the creation of the Canada Millennium Scholarship Foundation, the Québec government stated its objection to this federal initiative and announced its intention to withdraw from the upcoming program with full compensation.[442] On March 30, 1998, Québec proposed to amend the federal bill instituting the Foundation to integrate

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[438] Document *Canadian Social Union: Québec's position* tabled by Québec Prime Minister Lucien Bouchard, at the First Ministers' Conference, St. Andrews, August 6-8, 1997, p. 1-2.

[439] Communiqué on early childhood development, Meeting of First Ministers, Ottawa, September 11, 2000.

[440] Press release by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, Québec, December 19, 1997. See also the unanimous resolution of the Québec National Assembly dated April 15, 1997, authorizing the constitutional amendment (Part 3: document no. 33).

[441] Press release by Pauline Marois, Minister of Education, and Jean Rochon, Minister of Health and Social Services, Québec, December 8, 1997.

[442] Letter from Lucien Bouchard to Jean Chrétien, Prime Minister of Canada, February 17, 1998, referring to a letter dated December 5, 1997.

into it an opting-out right with compensation for provinces that have built and administer a student financial assistance program to ensure them equal opportunities regarding post-secondary education.[443]

420. That, for the benefit of Québec students, the National Assembly urgently ask the federal government and the Québec government to resume the negotiations regarding the millennium scholarship in order that an agreement on legislative amendments respecting the following principles may be reached:

a) The part granted each year to Québec students is determined by means of a formula based on demographic parameters;

b) Québec selects the students who shall receive a scholarship;

c) The scholarships are forwarded to the recipients in such manner so as to avoid all duplication and to ensure the necessary visibility to the federal government.

Furthermore, the National Assembly acknowledges the Québec government's intention to allocate the amounts thus saved in its scholarship programme to the funding of colleges and universities.[444]

Millennium Scholarships: See also paragraph 448.

421. Under the Canada-Québec Labour Market Development Agreement in Principle, Québec accepts responsibility for the planning, design, delivery and evaluation of active employment measures financed by the Employment Insurance Account. In addition, Québec accepts primary responsibility for job placement and information on the Québec labour market. The agreement reached between Québec and the federal government was concluded after more than thirty years of requests that culminated in tight negotiations begun in December 1995. The Agreement is an important step in recovering full power over labour force issues and makes it possible to begin eliminating the overlapping of employment policies in Québec.[445]

422. Québec agrees with the health care communiqué released at the First Ministers' Meeting on September 11, 2000. It specifies that nothing in the communiqué will be interpreted so as to derogate from the respective governments' jurisdictions. The components of this communiqué, namely the vision, principles, action plan for health system renewal, clear accountability and working together shall be interpreted in full respect of each government's jurisdictions.[446]

423. Québec has always stood firm on exercising its jurisdictions in fiscal policy and the collection of revenues. In this context, federal agency formulas pertaining to revenue and border services could not be applied to Québec.[447]

Tax collection: See also paragraph 458.

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[443] Québec government proposal to amend Bill C-36, Ottawa, March 30, 1998.

[444] Unanimous resolution of the Québec National Assembly dated May 14, 1998 (quotation). An administrative agreement was concluded with the Canada Millennium Scholarship Foundation and the ministère de l'Éducation du Québec in December 1999.

[445] Press release by Lucien Bouchard, Montréal, April 21, 1997.

[446] Health care communiqué released at the First Ministers' Meeting, Ottawa, September 11, 2000.

[447] Letter from Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, to Paul Martin, federal Minister of Finance, Québec, February 26, 1997.

424.[...] Whereas above and beyond its jurisdictions in matters of education, language, culture and identity, the Gouvernement du Québec is the sole interlocutor competent to directly and appropriately represent the reality and interests of the Québec people; [...]

The Gouvernement du Québec declares:

- That in all international forums dealing with education, language, culture and identity, it is fundamental that the Gouvernement du Québec speak in its own voice on behalf of the Québec people;
- That the Gouvernement du Québec therefore intends to participate directly in these forums, to encourage the holding of them and to favour their organization and action;
- That for the purposes of participating in certain international organizations to which Canada is the statutorily accredited State, the Gouvernement du Québec intends to initiate negotiations with the federal government in order to reach agreement on the terms and conditions of its presence and the exercise of its freedom of speech.[448]

425.If the federal principle is to be preserved in the context of globalization, the federated entities would have to have control over their own international relations for all issues related to their exclusive internal jurisdiction, and conversely the federal governments would have to agree to limit their interventions to exchanges concerned solely with matters under their own jurisdiction. It is therefore clear that if we are unable to leave room for the federated entities on the international stage, and continue to reserve it exclusively for fully sovereign States, the federated entities that have the means to do so will naturally seek a change in their status, driven by the need to ensure that their communities are able to develop their full potential. This temptation will be all the greater since globalization has the effect of reducing one of the gains of the federal system, namely the maintenance and protection of a common economic space. Given that this gain could henceforth depend increasingly on the international order, many federated entities may find that they are no longer satisfied with their current political arrangements.[449]

426.The recognition of cultural duality means for Québec where over 85% of Canada's French-Speaking population lives, that its government would be entrusted with exclusive powers in cultural affairs with full financial compensation.[450]

427.Québec is firmly opposed to any proposal seeking to question Québec's and the provinces' recognized jurisdiction in securities and to thereby allow the federal government to interfere in the securities sector, whether directly or indirectly.[451]

428.That the National Assembly clearly affirm Québec's wish to continue, with the other provinces, the harmonization process with regard to securities, which is in conformity with the objective of preserving the Canadian economic space, and that it request that the federal government abandon its plan to create a National Securities Committee, *which* constitutes interference in a provincial area of jurisdiction.[452]

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[448] Declaration of the Gouvernement du Québec respecting Québec's participation in international forums dealing with education, language, culture and identity, Québec, March 24, 1999 (quotation: see part 3: document no. 39).

[449] *Globalization, the Federative Deficit and the Case of Québec*, speech by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, delivered on the Occasion of the XVIIIth World Congress of the International Political Science Association, Québec, August 3, 2000, p. 5-6 (quotation: see part 2 of this document).

[450] Letter from Louise Beaudoin, Minister of Culture and Communications and Minister responsible for the Charter of the French Language, to Sheila Copps, federal Deputy Prime Minister and Minister of Canadian Heritage, Québec, January 16, 1997.

[451] Letter from Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, to Paul Martin, federal Minister of Finance, Québec, March 7, 1996.

429. In the area of banking reform, the government of Québec asks the federal government not to provoke inefficiency in Québec consumer protection by introducing costly duplications of surveillance structures and recourse, as well as the confusion, even overlaps, in the regulating of financial markets.[453]

430. Federal Bill C-54 on the Personal Information Protection and Electronic Documents Act in the private sector constitutes both a significant step backwards for Quebecers as regards the protection of personal information and an unacceptable intrusion in an area of jurisdiction belonging to Québec. By extending the scope of the bill to virtually all businesses, the federal government has opened the door to expensive and heavy duplication for citizens and probably, in the end, to constitutional disputes.[454]

431. Federal Bill C-54 jeopardizes certain civil law principles that govern Québec society. The government of Québec has always considered the resolution adopted by the House of Commons after the 1995 referendum on the distinct society to be trivial and of no effect. Nonetheless, since this is a federal policy, coherence would imply the pure and simple withdrawal of Bill C-54 or, failing this, substantial amendments *to exclude Québec from its field of* application.[455]

432. The federal Personal Information Protection and Electronic Documents Act in the private sector touches upon issues of civil law that come under the jurisdiction of Québec and for which Québec fully assumes its responsibility. The federal statute establishes a twofold legal system, applying concurrently, which will uselessly complicate matters for consumers and businesses, besides creating an unthinkable mess. Moreover, part 2 of the federal statute pertaining to signatures and electronic documents adopts an approach contrary to that of Québec, which currently sets the necessary legislative parameters needed for establishing the legal stability of E-trade transactions.[456]

433. In the field of consumer protection rights, Québec intends on pursuing its joint efforts with Canadian provinces, but it is opposed to any federal determination to define a national standard in such fields. Québec fully accepts its jurisdiction in the field of consumerism.[457]

434. The government of Québec refuses to sign the Canada-wide Accord on Envi-

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[452] Unanimous resolution of the Québec National Assembly dated June 4, 1996 (quotation). This resolution was referred to in the letter dated February 13, 1997 from Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, to Paul Martin, federal Minister of Finance.

[453] Letter from Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, to Paul Martin, federal Minister of Finance, Québec, June 10, 1999.

[454] Declarations by André Boisclair, Minister of Relations with Citizens and Immigration, and Louise Beaudoin, Minister of Culture and Communications, press release, Montréal, November 20, 1998.

[455] Letter from Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, to Stéphane Dion, federal Minister of Intergovernmental Affairs and President of the Privy Council, Québec, April 28, 1999.

[456] Declarations by Robert Perreault, Minister of Relations with Citizens and Immigration, and David Cliche, Minister Responsible for the Information Highway, press release, Québec, October 28, 1999.

[457] Declarations by Robert Perreault, Minister of Relations with Citizens and Immigration, press release, Federal-Provincial Conference of Ministers responsible for Consumerism, Banff, November 19, 1999.

ronmental Harmonization and related Sub-agreements of the Canadian Council of Ministers of the Environment until the conditions set by Québec are respected by the government of Canada. These prior conditions demanded by Québec include recognition of the exclusive or prevailing jurisdictions assigned to it under the Constitution, a firm commitment on the part of the federal government to Québec specifying the legislative amendments to federal statutes required for harmonizing purposes will effectively be adopted and, finally, the reaching of a bilateral agreement with the federal government pertaining to environmental assessments.[458]

c) Unilateral powers

435. Ottawa claims that from now on it wants to limit [its spending power], but Ottawa's commitment is revocable, conditional and does nothing to solve current problems. Ottawa reserves the right to impose on Québec financial or normative constraints if the federal government reaches an agreement with the majority of the provinces to implement new shared-cost programs. Ottawa keeps its discretionary power to act unilaterally in any of Québec's exclusive powers while also maintaining its capacity to set at will the compensation to be paid to Québec. Above all, one sees the confirmation of all past intrusions in the fields of education, health, social services and income security. The government of Québec prefers asking Ottawa to unconditionally transfer its fair share of taxes that Quebecers send to Ottawa so that Québec may of its own accord invest them in its areas of exclusive powers.[459]

436. Québec [...] cannot nor does it want to be associated with the federal-provincial process [relating to social policy reform and renewal] because of the two pernicious effects it will have: first, that of limiting the exercising of its exclusive powers regarding health, education and income security to the benefit of the federal government; second, this will make it inevitable that some portion of Quebecers' taxes will serve as a tool for imposing on them policies that do not answer their needs and perpetuate overlapping and waste.[460]

437. Most recommendations from the report of the Intergovernmental Ministerial Council on Social Policy Renewal—a council with which Québec has not associated itself—seek to standardize social policy Canada-wide and thereby offers the federal government an opportunity to legitimize the enhanced role—which has no constitutional basis—that it wishes to have. Québec cannot commit itself to an intergovernmental decision-making processes whose effect will be to subject it to standards to which Québec has not consented in areas belonging to its jurisdiction.[461]

438. The Québec government condemns the proposals on social policy reform

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[458] Press release by Paul Bégin, Minister of the Environment and Wildlife, at the meeting in St. John's (Newfoundland) of the Canadian Council of Ministers of Environment, January 29, 1998.

[459] Press release by Lucien Bouchard, Federal-Provincial Meeting of First Ministers, Ottawa, June 21, 1996, N° 1 (quotation) [Translation].

[460] Press release by Lucien Bouchard , Federal-Provincial Meeting of First Ministers, Ottawa, June 21, 1996, N° 2 (quotation) [Translation].

[461] Declaration by Lucien Bouchard at the annual Conference of Provincial First Ministers, press release entitled *Social programs: Québec refuses the provinces' proposal to centralize Québec's powers in social affairs in Ottawa* Jasper, August 23, 1996.

under which Québec would be invited to give up the authority it has always claimed to set its own priorities and allocate the power available to the specific needs of Quebecers.[462] The government of Québec remains the most suited government for answering the specific needs of Quebecers.[463] The Québec government is the best positioned government to meet the specific needs of Quebecers.

439. An intergovernmental mechanism to formulate national standards for social programs. Such a mechanism is consistent with a view of the federal system shared by many provinces in English Canada. Québec's view in this matter is profoundly different, but just as legitimate. On one side, the vision of English Canada attributes to the federal government responsabilities in the definition of social policies regardless of the provisions of the Constitution. On the other, the vision of Québec claims historically that its exclusive jurisdiction be recognized and reaffirms its determination to maintain sole control over its social program priorities and policy directions within its territory. With this mechanism, Québec is being asked to relinquish its jurisdiction and hand over choices and policy directions for social programs to an intergovernmental body in which it will necessarily be in a minority situation.[464]

440. Québec is quite prepared to share its social policy experience and to conclude reciprocity agreements with interested provinces to ensure the accessibility and portability of social program benefits.[465]

441. The government of Québec is prepared to participate in talks dealing with the establishment of an umbrella agreement on the management of the social union and the monitoring of "federal spending power," provided that all participating governments adhere to the following:

1) The participants must express an interest in the recognition of a province's unconditional right to withdraw with full compensation in respect of any measure or matter likely to affect an area of provincial jurisdiction and agree that the definition of this of withdrawal right will be a key objective of talks on the umbrella agreement.
2) During discussions on such an umbrella agreement, all participants, including the federal government, must agree to a moratorium on any new federal government initiative or measure likely to affect an area of provincial jurisdiction. Consequently, the participants agree, in a non-restrictive manner, that any discussion or implementation of such initiatives or measures will be postponed until the conclusion of talks on the framework agreement.
3) The Québec proposal must in no way be interpreted as direct or indirect recognition of federal spending power or any federal role whatsoever in the realm of social policy.

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[462] Document entitled *Administrative Re-Balancing of Roles and Responsibilities: Québec's Position* tabled by Québec Prime Minister Lucien Bouchard, at the First Ministers' Conference, St. Andrews, August 6-8, 1997, p. 1 (quotation).

[463] Document *Canadian Social Union: Québec's position* tabled by Québec Prime Minister Lucien Bouchard, at the First Ministers' Conference, St. Andrews, August 6-8, 1997, p. 1 (quotation).

[464] *Ibid.*, p. 1-3 (quotation).

[465] *Ibid.*, p. 3 (quotation).

Moreover, Québec reaffirms its historic position concerning respect for its fields of jurisdiction.[466]

442. The primary concern of the provinces, both with regard to the ministerial council's talks on social policy renewal as the current negotiations on the proposed framework agreement on the social union, resides essentially in their determination to shelter themselves from unilateral federalism through which Ottawa has massively disengaged itself from the financing of social programs. Québec shares this concern with the provinces as regards the stability and continuity of federal commitments to financing social programs. Nonetheless, Québec's concern extends far beyond with regard to federal spending power. Québec considers that the development, planning and management of social programs is its sole responsibility. Not only does the Constitution recognize its exclusive power in this matter, but moreover, the Québec government is the one closest to Quebecers and the one most suited for respecting their aspirations and answering their needs and priorities. This is why Québec has always demanded its withdrawal with full fiscal or financial compensation from any federal government initiative financed by its spending power. Québec considers that it must be the sole master over social policy initiatives that it defines on the basis of its way of doing things and its specific reality.[467]

443. The guarantee of a right to opt out with full financial compensation is a condition that cannot be ignored for Québec to participate in negotiations relating to a future social union project.[468]

444. Not recognizing Québec's right to opt-out with full financial compensation from any federal initiative in social policy means refusing to clearly recognize Québec's specific reality, its distinct character and it confirms that the recognition of Québec's uniqueness in character set forth in the Calgary Declaration is merely symbolic.[469]

445. On August 6, 1998 in Saskatoon, the Québec government joined in negotiations relating to the social union framework agreement. The Premiers recognized the essential dimension of the provincial/territorial consensus negotiating position as regards the ability of a province or a territory to opt out of any new or modified Canada-wide social program in areas of provincial /territorial jurisdiction with full compensation, provided that the province or the territory carries on a program or initiative that addresses the priority areas of the Canada-wide program.[470]

446. In August of last year, in Saskatoon, the Government of Québec agreed to support a common claim devised by the other provinces of Canada and the basic objective of which was to limit the federal government's spending

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[466] Press release by Lucien Bouchard, Conference of First Ministers, Ottawa, December 12, 1997.

[467] Speech by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, regarding Québec's position on the issue of the federal spending power within the scope of discussions on the social union framework agreement, Federal-Provincial Meeting of Ministers responsible for the Social Union Framework Agreement, Toronto, April 17, 1998, p. 1 (quotation) [Translation].

[468] *Ibid.*, p. 3 (quotation) [Translation].

[469] *Ibid.* (quotation) [Translation].

[470] Communiqué entitled *The Canadian Social Union Framework Agreement*, 39th Annual Conference of Provincial First Ministers, Saskatoon, August 6, 1998. The interprovincial consensus was reaffirmed on January 29, 1999 in Victoria.

power, one of the most serious deviations of our recent history. [...] The proposal of the provinces succeeded in reconciling the interests of several English-Speaking provinces and those of Québec. Indeed, the Saskatoon consensus allows the English-Speaking provinces, if they so desire, to accept the federal presence and to collaborate with it. Moreover, this consensus allows other provinces which, like Québec, wish to retain their jurisdictions and autonomy, to exercise their right to opt out with full compensation of any federal initiative in these fields.[471]

447. The government of Québec refused to sign the Social Union Framework Agreement that was reached on February 4, 1999 between the federal government and the provinces.[472]

448. Why did we say no [to the Social Union Agreement]? Well, essentially because the Social Union Agreement does not confer upon Québec any true opting-out right with full compensation as regards any new Canada-wide social initiative to which we would prefer our own initiative or action, as for instance, the $5 per day nurseries. Québec also refused this agreement because it does not in any way prevent a repetition of the Millennium Scholarship unilateral scenario. This agreement, in fact, legitimizes Ottawa's recourse to direct transfers to individuals or organizations when it is unable to obtain support from a majority of provinces for the implementation of some new Canada-wide social initiative. Québec said no to the agreement because we cannot accept having a new Canada-wide social initiative in our fields of jurisdiction that is imposed on us by a federal government that would see its legitimacy—in appearance—backed by six provinces hardly representing 15% of Canada's population. It must also be stated that the opting-out right provided under the agreement is only applicable to new shared-cost programs [...], it is still highly conditional upon achieving all the Canada-wide objectives as well as respecting the accountability conditions set by Ottawa. The only federal obligation is limited in such cases to a prior notice to the provinces [that] does not entail any obligation of result. What's more, as regards mobility this agreement contains clauses likely to directly impact Québec policy on differential school fees for students from outside Québec, including the compulsory residential period as a criteria for eligibility under the loans and bursary program, as well as the qualification system in the construction sector. So for all of these reasons and because, generally speaking, this Social Union Agreement has a direct impact upon Québec's constitutional responsibilities regarding the development, planning and management of social programs that answer the needs of our population, we have chosen not to sign.[473]

The Social Union Framework Agreement and the Status of Québec: See paragraph 389.

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[471] Declaration by Lucien Bouchard on the Social Union, January 27, 1999, p. 1 (quotation).

[472] *A Framework to Improve the Social Union for Canadians*, February 4, 1999. This agreement, which Québec did not sign, is reproduced in part 3: document no. 38.

[473] Speech by Joseph Facal, Minister responsible for Canadian Intergovernmental Affairs, at the time of reviewing budgetary credits 1999-2000 of the Secrétariat aux affaires intergouvernementales canadiennes, Québec National Assembly, *Journal des débats of the Commission permanente des institutions*, April 28, 1999, CI-9, p. 3.

••• Language rights

449. The government of Québec solemnly reaffirms its commitment to preserve the rights of the English-Speaking Community now and in a sovereign Québec. Administration of their schools, colleges and universities; access to courts and the government in English; access to social and health care services in their language; public radio and television broadcasting services in English.[474]

450. By authorizing the amendment to section 93 of the Constitution Act, 1867 allowing the establishment of linguistic school boards, the National Assembly reaffirmed the established rights of the Québec English-Speaking Community. More specifically, Quebecers whose children are admissible in accordance with Chapter VIII of the Charter of the French Language have the right to have them receive their instruction in English language educational facilities under the management and control of this community, as provided by law, and which are financed through public funds.[475]

Established rights of the Québec English-Speaking Community: See also paragraph 402.

••• Institutions

451. That the National Assembly express the wish that the office of Lieutenant Governor be abolished; nevertheless, given that the provisions of the Constitutional Act imposed upon Québec render impossible the abolition of this office at the current time, the National Assembly requests that the federal government henceforth appoint as titular of the office of Lieutenant Governor the public figure democratically designated by the Assembly.[476]

452. Centralizing federal interventions are expressed in [...] intergovernmental forums. The discussions in these forums —as seen in the social policies case— often acts as a powerful accelerator of federal government initiatives in areas that are not under its jurisdiction. In these forums, one must also note the fact that Québec's positions are not taken into account has become a Canadian habit. The case of the so-called "national" benefit for children imposed on Québec in 1996 constitutes tangible evidence of this trend. It is, however, of fundamental importance that the government of Québec make known its positions regarding these intergovernmental forums and then closely follow their evolution.[477]

••• Intergovernmental policy

a) Conducting intergovernmental relations

453. Québec cannot commit itself to a re-balancing process whose general orientations and specific measures lead to the abandoning of Québec's basic claims and the gradual erosion of these claims via administrative intergovernmental means.[478]

454. Québec reaffirms its intention to continue, outside the on-going re-balancing

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[474] *Living together before, during and after the referendum*. Notes for a speech by Lucien Bouchard before the English-Speaking Community of Québec, Montréal, March 11, 1996, p. 7.

[475] Unanimous resolution of the Québec National Assembly dated April 15, 1997, (Part 3: document no. 33).

[476] Resolution of the Québec National Assembly dated November 20, 1996 (quotation).

[477] Ministerial declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs on Canadian intergovernmental relations, Québec National Assembly, *Journal des débats*, December 4, 1997, p. 9087 (quotation) [Translation].

[478] Declaration by Lucien Bouchard, press release entitled: *The Re-Balancing of the Roles and Responsibilities of Ottawa and the Provinces: Another Road to Centralization*, Jasper, August 23, 1996 (quotation) [Translation].

exercise and on a bilateral basis, its discussion with the federal government in basic areas of practical importance to Quebecers. These discussions will focus on putting an end to Ottawa's intrusions in Québec's domains of responsibility and on ensuring that any transfer of federal measures and programs is matched by the corresponding budgets in tax points. [...] In the general spirit of partnership that it wishes to maintain and further develop with Canada, Québec will continue its discussions with the provinces, particularly on issues affecting employment and the economy, notably the implementation of the Agreement on Internal Trade, to strengthen the economic space that it shares with them.[479]

455. Faced with the federal government's strategy, which on the one hand seeks to deny the existence of the people of Québec, capable and free to decide on their political future, and on the other, it behaves as if Canada were a unitary State, thus denying both the spirit and the letter of the Canadian Constitution, the government of Québec makes public the orientations in Canadian intergovernmental relations that will guide the Québec government's actions.[480]

b) Financial aspects of federalism

456. [...] As long as it is part of the federation, Québec will continue to demand that the federal government withdraw from social program funding and vacate the tax space in which it collects taxes from Québec taxpayers for purposes that fall within Québec's exclusive jurisdiction.[481]

Tax points transfer:
See also paragraphs 410, 414, 435 and 442.

Federal disengagement from the financing of social programs: See paragraphs 411 and 442.

457. The government of Québec shall actively participate in intergovernmental discussions on issues involving the revision of financial arrangements within the federation. Within the framework of these discussions, the government's objective shall not only be to preserve, but also to increase Québec's fiscal autonomy.[482]

Fiscal autonomy: See also paragraph 409.

458. Considering specifically that the ministère du Revenu du Québec is already the sole tax collector in Québec; considering the genuine advantages for our governments and citizens that result from this unified administration; considering that the ministère du Revenu du Québec already administers a tax system in Québec; considering that this system is already largely harmonized with the federal system and considering, lastly, this wish that citizens may only have one collector of taxes; It appears to the government

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[479] Document entitled *Administrative Re-Balancing of Roles and Responsibilities: Québec's Position* tabled by Québec Prime Minister Lucien Bouchard, at the First Ministers' Conference, St. Andrews, August 6-8, 1997, p. 3 (quotation).

[480] Ministerial declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs on Canadian intergovernmental relations, Québec National Assembly, *Journal des débats*, December 4, 1997, p. 9087-9088. Guidelines made public on this occasion are reproduced in part 3: document no. 37.

[481] Document entitled *Canadian Social Union: Québec's position* tabled by Québec Prime Minister Lucien Bouchard, at the First Ministers' Conference, St. Andrews, August 6-8, 1997, p. 3 (quotation).

[482] Ministerial declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs on Canadian intergovernmental relations, Québec National Assembly, *Journal des débats*, December 4, 1997, p. 9088 (quotation) [Translation].

of Québec that the taxation model it has developed with the federal government could be advantageously extended to corporate and individual taxes thereby making the ministère du Revenu du Québec the only tax collector in Québec.[483]

***Canada Customs and Revenue Agency:
See paragraph 423.***

459. Considering the compensation paid to the Atlantic provinces within the context of harmonizing the federal tax on goods and services, Québec deems it is entitled to receive compensation from the federal government since Québec by itself and without financial assistance, proceeded with the harmonization of its sales tax system with that of the federal tax system.[484]

460. Québec is prepared to accept a transfer of all federal responsibilities regarding housing, provided that this be accompanied with satisfactory financial compensation in light of criteria of fairness, sufficiency and continuity. Currently, Ottawa's proposal is limited to offering Québec only the administration of existing federal obligations with regard to social housing stock, which only amounts to a simple management contract. In addition, on the subject of social housing, Québec has not obtained its fair share of federal expenditures; the government cannot accept this situation, no more than prior administrations were able to tolerate this. Were we to be satisfied with less than our share of financing of the federal effort for housing, this would be all the more unacceptable since Québec needs in this area are proportionately greater than those of the other provinces.[485]

461. The economic and financial policies of the federal government constitute an enormous burden for Québec. In this respect, Québec speaks out against the small share of federal development expenses made in Québec, plus the weak federal contribution to research and development in Québec, a core sector in an increasingly knowledge-based economy.[486]

c) Aboriginal Nations

462. The government of Québec has adopted new guidelines regarding aboriginal affairs that are consistent with earlier political steps, namely, the 1985 National Assembly resolution and the fifteen principles adopted by the government in 1983. The primary objectives of these orientations are to develop harmonious relations based on confidence and mutual respect between Aboriginal Peoples and non-aboriginals, to increase the self-government and fiscal autonomy of Aboriginal Peoples. The approach proposed by the government seeks the making of agreements favouring responsibility and development with aboriginal communities and the implementation of measures

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[483] Letter from Rita Dionne-Marsolais, Minister of Revenue, to Herb Dhaliwal, federal Minister of National Revenue, Sainte-Foy, April 3, 1998. The position was reiterated in the letter dated June 30, 1999 from Bernard Landry, Deputy Prime Minister, Minister of State for the Economy and Finance and Minister of Revenue, addressed to Herb Dhaliwal.

[484] Declarations by Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, and Jacques Brassard, Minister of Transportation, Minister responsible for Canadian Intergovernmental Affairs, Press release, Québec, May 21, 1996; see also the press release by Bernard Landry and Jacques Brassard dated December 13, 1996.

[485] Declarations by Rémy Trudel, Minister of Municipal Affairs and Minister Responsible for Housing, and Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, press release, December 16, 1997; letter from Rémy Trudel to Alfonso Gagliano, federal Minister responsible for the Canada Mortgage and Housing Corporation, Québec, January 8, 1998.

[486] Press release by Bernard Landry, Deputy Prime Minister and Minister of State for the Economy and Finance, Ottawa, December 8, 1999.

for creating more favourable conditions for the development of the economy and employment among Aboriginal Peoples.[487]

The Rights of Québec's Aboriginal Nations:
See paragraph 402.

d) French-Speaking and Acadian Communities of Canada

463. The government of Québec reiterates its commitment of solidarity with the French-Speaking and Acadian Communities of Canada. For many years now Québec has understood that this commitment regarding the French language within its territory obviously cannot be dissociated from a commitment of solidarity with the International Francophone Community, but even more so with regard to French-Speaking and Acadian Communities.[488]

e) Trade

464. Since Québec is resolutely committed to the opening of markets, to the greatest possible elimination of barriers, to the fluidity of commercial exchanging of goods, services and capital, and the free movement of people both internationally as within a present and future framework of partnership with the other governments of Canada, the government of Québec wants to be a highly active stakeholder in the Agreement on Internal Trade.[489]

465. The government intends to work towards the reinforcement of the Québec-Canada economic space by pursuing efforts for implementing the Agreement on Internal Trade (AIT) while privileging the making of bilateral economic agreements such as those entered into with Ontario and New Brunswick.[490]

Common economic space:
See also paragraphs 425, 428 and 454.

f) Criminal justice system for young persons

466. The government of Québec maintains that the federal reform of the criminal justice system for young persons is neither necessary nor justified and that it runs the risk of endangering the rehabilitation model that Québec has set up. Québec requests the federal government that it may keep the current system provided under the Young Offenders Act.[491]

467. The National Assembly asks the Federal Minister of Justice to suspend the passage of Bill C-3 [on criminal justice for young persons] in order to

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487. *Partnership, Development, Achievement. Aboriginal Affairs: Québec Government Guidelines*, 1998; Press release by Guy Chevrette, Minister of State for Natural resources, Minister for the Regions and Minister responsible for Aboriginal Affairs, Québec, April 2, 1998.

488. Declarations by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, made on the occasion of the 1997 Forum francophone de concertation, Press release, Québec, March 14, 1997.

489. Speech by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, at the time of reviewing budgetary credits 1996-1997 of the Secrétariat aux affaires intergouvernementales canadiennes, Québec National Assembly, *Journal des débats of the Commission permanente des institutions*, April 30, 1996, CI-10, p. 3 (quotation) [Translation].

490. Ministerial declaration by Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs on Canadian intergovernmental relations, Québec National Assembly, *Journal des débats*, December 4, 1997, p. 9088 (quotation) [Translation].

491. Letter from Linda Goupil, Minister of Justice and Attorney General, to Anne McLellan, federal Minister of Justice and Attorney General for Canada, Sainte-Foy, May 3, 1999.

allow her to make a better assessment of the implementation by the provinces of the measures provided for in the Young Offenders Act and to ensure that Québec maintain its intervention strategy, which is based on the needs of young people and which favours prevention and rehabilitation.[492]

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[492] Unanimous resolution of the Québec National Assembly dated December 1, 1999 (quotation).